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INTERSTATE COMMERCE COMMIS

**NON-RECOURSE PURCHASE
AND LEASE AGREEMENT**

(relating to surface railway rolling stock)

Dated as of October 1, 1973

BETWEEN

WHITKATH INC.,
Lessor

AND

UNITED STATES STEEL CORPORATION,
Lessee

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* Lease (relating to surface railway rolling stock only).

NON-RECOURSE PURCHASE AND LEASE AGREEMENT

WHEREAS, UNITED STATES STEEL CORPORATION, a Delaware corporation ("Lessee"), is in the process of commencing development and construction of the Mine and the Loading Site referred to below and has contracted and will contract to purchase assets, and has contracted for and will contract for or will itself provide design, engineering, installation and other services relating thereto; and

WHEREAS, the Lessee and WHITKATH INC., a New York corporation ("Lessor"), desire (a) that Lessor shall make certain Lessor Payments in respect of certain of such assets (the "Designated Assets") including certain of the costs of design, engineering, installation and other services relating thereto, (b) that Lessor shall take title to the Designated Assets and lease them to Lessee and (c) that Lessee shall pay Rent therefor, without Lessor or other persons having recourse to Lessee therefor except to the extent of Lessee's rights under Section 6.1 of the Coal Purchase Agreement referred to below; and

WHEREAS, the Note Purchasers have severally agreed in a Participation Agreement to purchase Notes from the Lessor on the conditions therein specified; and

WHEREAS, Lessor and the Note Purchasers have agreed that there will be (a) assigned to the Trustee under the Indenture substantially all of the Lessor's right, title and interest as assignee in Section 6.1 of the Coal Purchase Agreement and certain of its rights hereunder and (b) granted to the Trustee certain security interests in the Leased Assets, all as more fully provided for herein and in the Indenture;

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. DEFINITIONS. The terms defined below in this Section 1 shall, for all purposes of this Lease and of all leases supplemental hereto now or hereafter entered into, have the meanings herein specified, unless the context clearly otherwise requires:

Adjusted Termination Value means Termination Value as herein defined but excluding any amounts payable as or in respect of premium on any Notes.

Affiliate of a corporation means (a) a parent corporation owning, directly or indirectly, all of the voting securities (except directors' qualifying shares, if any) of such corporation, or (b) a subsidiary corporation all of the voting securities of which (except directors' qualifying shares, if any) are owned, directly or indirectly, by such corporation or (c) a corporation all of the voting securities of which (except directors' qualifying shares, if any) are owned, directly or indirectly, by the same parent corporation which owns all the voting securities (except directors' qualifying shares, if any) of such corporation.

Agreement and Disclaimer means the Agreement and Disclaimer dated the date hereof among Lessor, Lessee and the Trustee to be recorded in the Office of the Recorder of Deeds of Greene County, Pennsylvania, and any and all written modifications, alterations, amendments, supplements and extensions thereto.

Appraisal Procedure means the following procedure for determining Fair Market Sales Value or Fair Market Rental Value, as the case may be. If either party hereto shall have given written notice to the other requesting determination of such value by the Appraisal Procedure, then each party shall select an appraiser within ten Business Days of the giving of such notice. If one party shall fail to appoint an appraiser within the required time the decision of the appraiser appointed by the other party shall be final. If two appraisers are appointed they shall confer and agree upon the appropriate value. If they do not agree within 30 Business Days after the last of them is appointed then such two appraisers shall within five Business Days after such thirtieth Business Day agree upon a third independent appraiser who shall independently determine such value within 30 Business Days of his acceptance of his appointment, and his determination shall be final. If such two appraisers do not agree upon such third appraiser within the time prescribed then either party may request the American Arbitration Association to appoint such a third appraiser within 30 Business Days after such request is made, and both parties shall be bound by

any appointment so made within such period. If no such appraiser shall have been appointed within 30 Business Days of such request to the American Arbitration Association, either party may apply to any United States District Court or state court having jurisdiction to make such appointment. Any appraiser appointed by the American Arbitration Association or a court shall be instructed to determine the Fair Market Sales Value or the Fair Market Rental Value, as the case may be, within 30 Business Days after his appointment, and his determination thereof shall be final. All expenses and costs relating to the Appraisal Procedure shall be paid by Lessee as Supplemental Rent.

Authorized Lessee Representative means the person or persons at the time designated to act on behalf of the Lessee by written certificate furnished to the Lessor, containing the specimen signature of each such person and signed on behalf of the Lessee by its President or a Vice President and by its Secretary or an Assistant Secretary. Any Authorized Lessee Representative may be an officer or other employee of the Lessee.

Basic Lease Supplement means any Basic Lease Supplement substantially in the form of Schedule 1 hereto, entered into between Lessor and Lessee (i) for the purpose of continuing the demise of a Leased Asset or Assets then leased under an Interim Lease Supplement or (ii) for the purpose of the demise of a Designated or Transferred Asset or Assets which have never been leased under Interim Lease Supplements and any and all written schedules, exhibits, modifications, alterations, amendments and extensions to such Basic Lease Supplement.

Basic Rent means the rent payable under Section 14(b) hereof and the applicable Basic Lease Supplement with respect to a Leased Asset or a group of Leased Assets for the period from the commencement of the Basic Term to the end of such Basic Term with respect to such Leased Asset or group of Leased Assets.

Basic Term means the period during which a Leased Asset is leased by Lessor to Lessee as specified in the Basic Lease Supplement relating thereto.

Bill of Sale means a bill of sale substantially in the form of Schedule 2 to this Lease.

Business Day means any day other than a Saturday, Sunday, holiday or other day on which commercial banking institutions in New York City are authorized by law to close.

Coal Mine Health and Safety Act means the United States Coal Mine Health and Safety Act of 1969 (30 U.S.C. § 801 et seq.) as the same may be amended from time to time or any similar legislation enacted to supersede such Act.

Coal Properties has the meaning specified in Section 1 of the Coal Purchase Agreement. The map referred to in the definition of *Coal Properties* in the Coal Purchase Agreement is on file at the principal office of Lessor and is hereby incorporated by reference into this Lease.

Coal Purchase Agreement means the agreement of even date herewith between Lessee and Hydro entitled "Coal Purchase Agreement" and any and all written modifications, alterations, amendments, supplements and extensions thereto.

Code means the United States Internal Revenue Code of 1954, as amended. Whenever any specific Section of the Code is referred to herein, such reference shall also be deemed to apply to any successor section.

Deposit Receipts has the meaning specified in Section 16 of the Participation Agreement.

Designated Assets shall be the name applied to those assets (including all Parts of whatever nature from time to time incorporated therein) to be used in the Mine or at the Loading Site, which are described or referred to in Schedules 3 and 6 hereto prior to the time, if any, when such assets become Transferred or Leased Assets.

Encumbering means creating or permitting or suffering any Encumbrance.

Encumbrance means any interest in or claim relating to property securing an obligation to a person other than the owner of such property, whether such interest is based on the common law, statute or contract, and including but not limited to a lien, claim, charge or security interest arising from a tax, mortgage, pledge, conditional sale, trust receipt, lease, consignment, bailment for security purposes, security agreement or community property right. The term *Encumbrance* shall also include reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions, leases and other similar title exceptions affecting real property and any Designated, Transferred or Leased Asset used in connection therewith, *provided, however*, that *Encumbrance* (1) shall not include the "mortgage" referred to in Section 18.2 of the Coal Purchase Agreement (so long but only so long as the lien thereof is not claimed to or does not attach to any of the Transferred or Leased Assets), (2) shall not include the other rights of Lessee and Hydro under the Coal Purchase Agreement, (3) shall not include any of the following as long as they do not individually or in the aggregate involve the danger of sale, forfeiture or loss of any material Designated, Transferred or Leased Asset or interest therein or the underlying real property: (a) the respective rights of Lessor, the Owner Participants, if any, Lessee, Hydro, the Trustee and the Noteholders as provided in this Lease, the Owner Participants' Agreement, if any, the Hydro Consent and Agreement, the Indenture or the Participation Agreement, (b) Encumbrances which result from acts of Lessor, as such, the Owner Participants, if any, as such, or the Trustee, as such, or any Noteholder, as such, or which secure obligations (not required by the express terms hereof to be discharged by Lessee) of Lessor, as such, the Owner Participants, if any, as such, or the Trustee, as such, or any Noteholder, as such, (c) Encumbrances for taxes either not yet due or being contested in good faith and by appropriate proceedings, (d) inchoate materialmen's, mechanics', workmen's, repairmen's or employees' liens or other like Encumbrances arising in the ordinary course of business, which are not delinquent, or the enforcement of which has been suspended, but then only for the duration of such suspension and (e) Encumbrances arising out of judgments or awards against Lessee which have been adequately bonded or with respect to which at the time an appeal or proceeding for review is being or is in good faith intended to be prosecuted in good faith and with respect to which there shall be in effect a stay of execution pending such appeal or proceeding for review, (4) shall not include any rights of the Lessor or the Owner Participants, if any, or the Trustee under the Agreement and Disclaimer and (5) shall not include any other Encumbrance on the Mine or the Loading Site entered into by Lessee which, by its express terms, negates any attachment to or other interest of any kind in or to any of the Transferred or Leased Assets.

Event of Default shall have the meaning specified in Section 27 hereof.

Event of Loss shall have the meaning specified in the second sentence of Section 16(b) hereof and shall also mean with respect to any or all of the Designated, Transferred or Leased Assets any of the following events: (a) the total destruction of such Designated, Transferred or Leased Asset or damage thereto or to the real property on which it is located which in Lessee's good faith opinion renders repair impracticable or uneconomical; (b) the Designated, Transferred or Leased Asset shall in Lessee's good faith opinion have become permanently unfit for normal use; (c) the condemnation, confiscation, theft or seizure of, or requisition of title to, the Designated, Transferred or Leased Asset; or (d) the condemnation, confiscation or seizure of, or requisition of title to, any real property upon which the Designated, Transferred or Leased Asset may be located if in the good faith opinion of the Lessee removal or sale of the Designated, Transferred or Leased Asset is impracticable or uneconomical.

Fair Market Rental Value means the open-market cash rent payable quarterly that a willing person (other than a lessee-user then in possession) would pay in an arms-length transaction to a willing and informed owner under no compulsion to rent as determined in a mutual written agreement of Lessor and Lessee or, upon request by Lessor or Lessee at any time prior to such written agreement, by the Appraisal Procedure.

Fair Market Sales Value means the open-market sales value in lump sum cash that a willing buyer (other than a used-equipment dealer or a lessee-user then in possession) would pay in an arms-length

transaction to a willing and informed seller under no compulsion to sell as determined in a mutual written agreement of Lessor and Lessee or, upon request by Lessor or Lessee at any time prior to such written agreement, by the Appraisal Procedure.

Hydro means that body corporate continued by subsection (1) of Section 2 of The Power Commission Act, or by any re-enactment thereof, and its successors and assigns.

Hydro Consent and Agreement means the Consent and Agreement of Hydro in the form annexed hereto as Schedule 4 and any and all written modifications, alterations, amendments, supplements, and extensions thereto.

Immediately Available Funds means federal or other funds which are immediately available in the City of New York which shall be legal tender for the payment of public and private debts in the United States of America.

Indemnitee shall have the meaning set forth in Section 35 hereof.

Indenture means the Trust Indentures dated as of October 1, 1973 between the Lessor and First National City Bank, as Trustee, securing the Notes, as supplemented by the Owner Participants Agreement, if any, and any indentures supplemental thereto or amendatory thereof.

Interim Borrowings means the principal amount of the borrowings made from time to time by the Lessor to finance the making of Lessor Payments and interest paid or accrued on all such borrowings from time to time at the Minimum Commercial Lending Rate.

Interim Lease Supplement means any Interim Lease Supplement, substantially in the form of Schedule 5 hereto, entered into for the purpose of the interim leasing of any Leased Asset and any and all written schedules, exhibits, modifications, alterations, amendments and extensions thereto.

Interim Rent means the rent payable under Section 14(a) hereof and the applicable Interim Lease Supplement with respect to a Leased Asset or group of Leased Assets for the period from the commencement of the Interim Term to the end of the Interim Term with respect to such Leased Asset or group of Leased Assets.

Interim Term means the period, if any, during which a Leased Asset is leased by Lessor to Lessee under an Interim Lease Supplement as specified in the Interim Lease Supplement relating thereto.

Invoice means any invoice on a form supplied by a Vendor which (i) evidences the transfer of goods sold by a Vendor to Lessor and the Owner Participants, if any, or describes services performed by a Vendor for Lessor and the Owner Participants, if any and (ii) names Lessor and the Owner Participants, if any, as the vendee or vendees of such goods or services.

Lease means the two Non-Recourse Purchase and Lease Agreements dated as of October 1, 1973 between the Lessor and the Lessee, and any and all written modifications, alterations, amendments, supplements and extensions thereto. Each reference herein to "this Lease", "herein", "hereunder" or other like words shall include this Lease Agreement, each Interim Lease Supplement hereto and each Basic Lease Supplement hereto and any and all such written modifications, alterations, amendments, other supplements and extensions.

Leased Assets shall be the name applied to those formerly Designated or Transferred Assets (including all Parts of whatever nature as are from time to time incorporated therein) which at any time are being leased hereunder pursuant to an Interim Lease Supplement or a Basic Lease Supplement. The term *Leased Asset* means any of the Leased Assets which is separately and independently described in the Bill of Sale or Invoice relating thereto.

Lessee means (a) United States Steel Corporation, a Delaware corporation, or any surviving, resulting, transferee or sublessee corporation as provided in Section 38 hereof, or (b) Hydro, in the event Hydro shall assume obligations pursuant to the last paragraph of Section 27 hereof, or (c) their respective successors and assigns.

Lessor means (except as specifically otherwise provided in Section 36(e) hereof) WHITKATH INC., a New York corporation, as owner of Transferred and Leased Assets and as attorney-in-fact for the Owner Participants, if any.

Lessor's Cost means, as to any Designated, Transferred or Leased Asset, the total of (a) the Purchase Price thereof and the aggregate Pre-Purchase Advances and Service Payments made in respect thereof, (b) the total interest paid or accrued on Interim Borrowings made to finance such Pre-Purchase Advances and Service Payments and such Purchase Price up to and including (i) the day preceding the date of commencement of the Interim Term thereof (or the Basic Term if there is no Interim Term) or (ii) the date on which the Asset is purchased and paid for by Lessee or (iii) the date on which all of such sums are repaid in full by or on behalf of Lessee, whichever first occurs, (c) a proportionate share of total commitment and other fees, if any, and expenses paid or payable by Lessor and the Owner Participants, if any, pursuant hereto or to the Indenture or Participation Agreement and (d) all sales, use, and value added taxes (if any) paid or payable by Lessor and the Owner Participants, if any, in connection with the purchase thereof.

Lessor Payments means Pre-Purchase Advances, Purchase Prices, Service Payments and all other amounts expended or expenses or obligations incurred or accrued by Lessor in respect of any Designated, Transferred or Leased Asset which are or would be includible in Lessor's Cost thereof.

Loading Site has the meaning specified in Section 1 of the Coal Purchase Agreement.

Mine has the meaning specified in Section 1 of the Coal Purchase Agreement.

Minimum Commercial Lending Rate means the minimum commercial lending rate charged from time to time by Morgan Guaranty Trust Company of New York or its successors for loans in New York City to persons such as Lessee, such rate to be adjusted for purposes hereof on the effective dates of any changes in such minimum commercial lending rate. When used in connection with any retroactive time period, *Minimum Commercial Lending Rate* shall mean the rate or rates as in effect from time to time during such period.

Notes means the Lessor's 8 $\frac{1}{8}$ % Non-Recourse Secured Notes in the original aggregate principal amount not in excess of \$45,000,000 to be issued under the Indenture.

Noteholder means any person in whose name at the time any of the Notes is registered in the Note register to be kept pursuant to the Indenture.

Note Purchasers means the persons who have agreed in the Participation Agreement to purchase the Notes from the Lessor and their respective successors and assigns.

Optional Termination Value for a Leased Asset (a) as of any Quarterly Payment Date during a Basic Term, means the sum of (i) an amount determined by multiplying Lessor's Cost therefor by the applicable percentage specified with respect to such Basic Term in Schedule 3 or Schedule 6 annexed hereto (or as recalculated by Lessor and specified in the appropriate Basic Lease Supplement as provided in Section 10 hereof) plus (ii) that amount necessary to pay in full any premium payable on any Notes to be redeemed in connection with any payment of Optional Termination Value and (b) as of any other date of payment during a Basic Term means the sum of (i) the Optional Termination Value therefor as of the next preceding Quarterly Payment Date (or the first Quarterly Payment Date in such Basic Term if no Quarterly Payment Date has occurred since the commencement of such Basic Term) plus (ii) interest at the rate of 8 $\frac{1}{8}$ % per annum on such Optional Termination Value (other than on any portion thereof representing premium payable on the Notes) from such Quarterly Payment Date (or the date of commencement of such Basic Term if no Quarterly Payment Date has occurred since such commencement) to such date of payment, *provided, however*, that Optional Termination Value for such a Leased Asset as of any date shall in no event be less than the unpaid principal amount of the Notes relating to such Leased Asset required to be prepaid under the Indenture and outstanding on such date plus premium, if any, and interest accrued thereon to such date.

Owner Participant (except as specifically otherwise provided in Section 36(e) hereof) shall mean each person, if any, other than Lessor, who at the time holds an interest in the Transferred or Leased Assets under and pursuant to the Owner Participants' Agreement.

Owner Participants' Agreement shall mean the Owner Participants' Agreement and Indenture Supplement in substantially the form set forth appearing as Exhibit 5 to the Participation Agreement and any and all written modifications, alterations, amendments, supplements and extensions thereto.

Participation Agreement means the Participation Agreement of even date herewith among the Lessor, the Lessee, Hydro, the Trustee and the Note Purchasers and any and all written modifications, alterations, amendments, supplements and extensions thereto.

Parts means all appliances, parts, instruments, appurtenances, accessories, accessions, furnishings and other equipment of whatever nature which may from time to time be incorporated or installed in or attached to the Designated, Transferred or Leased Assets.

Power Commission Act means The Power Commission Act, Revised Statutes of Ontario 1970, Chapter 354, as the same may be re-entitled, re-enacted in whole or in part, or otherwise amended from time to time.

Pre-Purchase Advances means amounts advanced by Lessor (a) to Vendors for interim, progress, installment and other payments on or with respect to Designated Assets prior to the time of transfer of title thereto to Lessor and (b) to Lessee in reimbursement for any such payments previously made by Lessee to Vendors on Lessor's behalf. If, in Lessee's sole discretion, it shall be advisable for Lessor to retain any portion of a payment of a Pre-Purchase Advance for the purpose of obtaining further performance by a Vendor, or for any other reason, the amount retained shall be deemed to be a Pre-Purchase Advance already made regardless of the time distribution to the Vendor is made.

Purchase Price means (a) in a case where no Pre-Purchase Advance or Service Payment has been made, the sole payment made by Lessor (i) to the Vendor for the purchase of a particular Designated or Transferred Asset at or after the time of transfer of title thereto to Lessor or (ii) to Lessee in reimbursement for such a payment or payments made by Lessee on Lessor's behalf and (b) in cases where one or more Pre-Purchase Advances or Service Payments have been made, the final payment to the Vendor for such purchase or in such reimbursement to Lessee. If, in Lessee's sole discretion, it shall be advisable for Lessor to retain any portion of a payment of a Purchase Price for the purpose of obtaining further performance by a Vendor, or for any other reason, the amount retained by Lessor shall be deemed to be part of the Purchase Price already paid regardless of the time distribution to the Vendor is made.

Quarterly Payment Date means the first January 1, April 1, July 1 or October 1 following the date of the first execution and delivery of an Interim or Basic Lease Supplement and each January 1, April 1, July 1 or October 1 thereafter during the Term.

Quarterly Transfer Date means the date or dates (to be Business Days) in each calendar quarter on which the Lessor, pursuant to notice from Lessee, shall make Pre-Purchase Advances and Service Payments and pay Purchase Prices.

Rent means Interim Rent, Basic Rent and Supplemental Rent payable pursuant to this Lease.

Service Payment means a payment to Lessee or a Vendor solely for or in respect of design, engineering, installation and other services relating to Designated, Transferred and Leased Assets. Any payments made by Lessor to a Vendor (or to Lessee in reimbursement for any such payments) for any combination of both goods and services shall be considered to be payments of Pre-Purchase Advances and Purchase Prices and shall not be considered to be Service Payments. If, in Lessee's sole discretion, it shall be advisable for Lessor to retain any portion of a payment of a Service Payment for the purpose of obtaining further performance by a Vendor, or for any other reason, the distribution or distributions of the amount retained shall be deemed to be a Service Payment already made regardless of the time distribution to the Vendor is made.

Stipulated Loss Value for a Leased Asset (a) as of any Quarterly Payment Date during a Basic Term, means an amount determined by multiplying Lessor's Cost therefor by the applicable percentage specified with respect to such Basic Term in Schedule 3 or Schedule 6 annexed hereto (or as recalculated by Lessor and specified in the appropriate Basic Lease Supplement as provided in Section 10 hereof) and (b) as of any other date of payment during a Basic Term means the sum of (i) the Stipulated Loss Value therefor as of the next preceding Quarterly Payment Date (or the first Quarterly Payment Date in such Basic Term if no Quarterly Payment Date has occurred since the commencement of such Basic Term) plus (ii) interest at the rate of $8\frac{1}{8}\%$ per annum on such Stipulated Loss Value from such Quarterly Payment Date (or the date of commencement of such Basic Term if no Quarterly Payment Date has occurred since such commencement) to such date of payment, *provided, however*, that Stipulated Loss Value for such a Leased Asset as of any date shall in no event be less than the unpaid principal amount of the Notes required to be prepaid under the Indenture relating to such Leased Asset outstanding on such date plus interest accrued thereon to such date.

Supplemental Rent means (i) all amounts, liabilities and obligations, other than Interim Rent and Basic Rent, which Lessee agrees to pay hereunder or under the Participation Agreement including without limitation Stipulated Loss Value, Termination Value, Adjusted Termination Value and Optional Termination Value and (ii) all amounts, liabilities and obligations which are payable by or chargeable against Lessor and the Owner Participants, if any, under the Participation Agreement or the Indenture (other than taxes which the Lessor is obligated to pay under Section 9 of the Indenture and the equivalent tax obligations of the Owner Participants, if any).

Term means, with respect to any Leased Asset, the then applicable Interim Term or Basic Term, as provided in the applicable Interim Lease Supplement or Basic Lease Supplement relating thereto and, with respect to this Lease generally, means the then remaining period of time prior to the expiration of this Lease, as provided in Section 12 hereof.

Termination Value for a Leased Asset (a) as of any Quarterly Payment Date during a Basic Term means the sum of (i) an amount determined by multiplying Lessor's Cost therefor by the applicable percentage specified with respect to such Basic Term in Schedule 3 or Schedule 6 hereto (or as recalculated by Lessor and specified in the appropriate Basic Lease Supplement as provided in Section 10 hereof) plus (ii) that amount necessary to pay in full any premium payable on any Notes to be redeemed in connection with any payment of Termination Value and (b) as of any other date of payment during a Basic Term means the sum of (i) the Termination Value therefor as of the next preceding Quarterly Payment Date (or the date of commencement of such Basic Term if no Quarterly Payment Date has occurred since such commencement) plus (ii) interest at the rate of $8\frac{1}{8}\%$ per annum on such Termination Value (other than on any portion thereof representing premium payable on the Notes) from such Quarterly Payment Date (or the first Quarterly Payment Date in such Basic Term if no Quarterly Payment Date has occurred since the commencement of such Basic Term) to such date of payment, *provided, however*, that Termination Value for such a Leased Asset as of any date shall in no event be less than the unpaid principal amount of the Notes required to be prepaid under the Indenture relating to such Leased Asset outstanding on such date plus premium, if any, and interest accrued thereon to such date.

Transferred Assets shall be the name applied to those formerly Designated Assets (including any and all Parts of whatever nature as are from time to time incorporated therein) during the period, if any, (a) after Lessor and the Owner Participants, if any, have title thereto and (b) before the same are demised to Lessee under Interim or Basic Lease Supplements. The term *Transferred Asset* means any of the Transferred Assets which is separately and independently described in the Bill of Sale or Invoice relating thereto.

Trust Estate shall have the meaning specified in the Indenture.

Trustee means First National City Bank, as Trustee under the Indenture, and its successors as such Trustee.

Vendor means any supplier (other than Lessee) of any goods or services constituting all or part of any of the Designated, Transferred or Leased Assets.

2. REPRESENTATIONS AND WARRANTIES OF LESSEE. In addition to the other representations and warranties of the Lessee set forth elsewhere herein or in any document or certificate delivered pursuant hereto, the Lessee represents and warrants as follows to the Lessor and the Owner Participants, if any:

(a) *Incorporation; Power and Authority.* The Lessee is a corporation duly organized and validly existing in good standing under the laws of the State of Delaware and has the corporate power and authority to own or hold under lease and operate its properties and to enter into and perform its obligations under this Lease, the Coal Purchase Agreement and the Participation Agreement and has not failed to qualify to do business in any jurisdiction in which failure to so qualify would materially affect its ability to perform its obligations under this Lease, the Coal Purchase Agreement and the Participation Agreement.

(b) *Due Authorization.* The execution, delivery and performance of this Lease, the Coal Purchase Agreement, the Participation Agreement and the Agreement and Disclaimer and the execution and filing of the financing statements referred to in Sections 6(b)(iv) and (vi) hereof have been duly authorized by all necessary corporate action on the part of the Lessee, do not require any stockholder approval, or approval, waiver or consent of any trustee or holders of any indebtedness or obligations of the Lessee, and do not and will not contravene any law, governmental rule, regulation or order binding on the Lessee or the certificate of incorporation or by-laws of the Lessee or contravene the provisions of, or constitute a default, or result in the creation of any Encumbrances upon property of the Lessee, under, any indenture, mortgage, contract or other agreement to which the Lessee is a party or by which it or its property may be bound or affected.

(c) *Governmental Approvals.* Neither the execution and delivery by the Lessee of this Lease, the Coal Purchase Agreement, the Agreement and Disclaimer or the Participation Agreement nor the consummation by the Lessee of any of the transactions contemplated hereby or thereby requires the consent or approval of, the giving of notice to, or the registration with, or the taking of any other action in respect of, any United States federal, state or local governmental authority or agency, except as expressly contemplated by the terms hereof or thereof or of the Indenture and except for building, construction and other permits, consents and other approvals necessary or advisable for the development, construction and operation of the Mine and the Loading Site, all of which will be obtained when and as required.

(d) *Legality, etc.* This Lease, the Agreement and Disclaimer and the Participation Agreement each constitutes a legal, valid and binding obligation of the Lessee in accordance with its terms.

(e) *No Actions or Proceedings.* There are no pending or threatened actions or proceedings before any court, administrative agency or other tribunal which will materially and adversely affect the ability of the Lessee to perform its obligations under this Lease or the Participation Agreement.

(f) *Title.* Upon receipt by Lessor of the Bill of Sale or Invoice for each of the Designated Assets the Lessor and the Owner Participants, if any, will acquire good and marketable title thereto free and clear of Encumbrances, and no filing or recording of any document not previously filed or recorded will be necessary or advisable in order to establish and perfect the title of Lessor and the Owner Participants, if any, thereto as against the Vendor thereof, Lessee, Hydro or any other person, subject to the Lease and the Indenture.

(g) *Compliance with Law.* The Designated, Transferred and Leased Assets will be designed, constructed, engineered, installed and used in accordance in all material respects with the Coal Mine Health and Safety Act and the Pennsylvania Bituminous Coal Mine Act of 1961, as amended, and in accordance in all material respects with all other applicable federal, state or local government statutes, ordinances, codes and rules, and as of each date on which title to a Designated Asset is transferred to Lessor, the use and operation of each Designated Asset then being transferred will not violate any applicable federal, state or local governmental statutes, ordinances, codes and rules in any material respect.

(h) *Personal Property.* Each Designated Asset in respect of which any Pre-Purchase Advance is made and each of the Transferred and Leased Assets will either be a special-purpose structure readily capable of being dismantled, transported and re-used without material damage thereto or to the underlying real property or will not be installed in or attached to any building or located above, upon or under any real property in such manner as to become part of such building or real property so as to preclude the removal thereof without material injury to such Designated, Transferred or Leased Asset or to such building or real property; the interest of Lessor and the Owner Participants, if any, therein will not include any foundations, pilings, footings, grouting or concrete pads or similar supports; and each such Designated, Transferred or Leased Asset will be (and it is the intention of the Lessee that each such Designated Asset and each Transferred or Leased Asset shall be and remain) personal property (except as may otherwise be provided under state or local law for purposes of state and local taxation and the exercise of the power of eminent domain) owned by the Lessor and the Owner Participants, if any, and removable by them pursuant hereto from the date of acquisition thereof by Lessor and the Owner Participants, if any, throughout the Term and thereafter unless otherwise agreed in writing.

(i) *Coal Purchase Agreement.* The Coal Purchase Agreement is a legal, valid and binding agreement of Lessee, Lessee has delivered true, correct and complete copies thereof to Lessor and, except for the assignment of rights under Section 6.1 of the Coal Purchase Agreement provided for in Section 13 hereof and related financing statements or other similar notices or filings made or to be made by Lessor and the Trustee to perfect and protect their respective interests therein, the Lessee's interest in the Coal Purchase Agreement is not, has not been and will not be subject to any Encumbrances. Lessee will not take any action which would terminate or impair, or omit to take any action necessary to preserve, the obligations of Hydro which have been assigned to Lessor pursuant to Section 13 hereof as legal, valid and binding obligations of Hydro. The assignment to the Lessor and the Owner Participants, if any, of all of the Lessee's right, title and interest in and to Section 6.1 of the Coal Purchase Agreement effected by Section 13 of this Lease creates a valid security interest in and to such right, title and interest.

(j) *No Encumbrances.* The Coal Properties, the Mine and the Loading Site are not, and will not at any time during the Term be, subject to any Encumbrance.

(k) *Incorporation of Other Representations and Warranties.* Each representation and warranty of United States Steel Corporation, a Delaware corporation, expressed in the Coal Purchase Agreement is hereby incorporated herein by reference and expressed to Lessor and the Owner Participants, if any, as though set forth in this Lease.

(l) *Information as to Useful Lives.* The information relating to the estimated serviceable lives and residual value of the Designated Assets heretofore furnished by Lessee for submission to the Internal Revenue Service is true, complete and accurate and represents Lessee's best informed judgment concerning such useful lives.

All representations and warranties of Lessee in this Section 2 and elsewhere herein and in any document or certificate delivered pursuant hereto shall survive the execution and delivery hereof regardless of (i) any investigation or other action taken by any person relying thereon, (ii) termination hereof, (iii) any repayment by Lessee of any element of Lessor's Cost or (iv) any purchase by Lessee of Transferred or Leased Assets from Lessor and the Owner Participants, if any.

3. CONSTRUCTION OF MINE AND LOADING SITE. Lessee agrees that it will cause the Mine and the Loading Site to be developed, constructed, completed and put into operation as provided in the Coal Purchase Agreement.

4. MUTUAL PURCHASE AND LEASE OBLIGATIONS; LIMITS ON LESSOR'S OBLIGATIONS. Subject to the other terms, limitations, conditions and provisions hereof, Lessor hereby agrees (a) to take title

on behalf of itself and the Owner Participants, if any, to all the Designated Assets delivered from time to time on or prior to April 3, 1979, (b) on Quarterly Transfer Dates (except as otherwise provided in respect of retentions in Section 20(a) hereof) to make Pre-Purchase Advances and Service Payments in respect thereof, and to pay the Purchase Prices thereof to Vendors (or (i) to Lessee but only for Service Payments or (ii) to reimburse Lessee for payments previously made by it to Vendors) and (c) on behalf of itself and the Owner Participants, if any, to lease to Lessee all Designated Assets purchased by Lessor. The total aggregate obligation of Lessor to make Lessor Payments under the Lease shall not exceed \$70,000,000 (it being understood that the aggregate claims of Lessor hereunder are not limited to such amount). Lessor's obligation to take title on behalf of itself and the Owner Participants, if any, to the Designated Assets and to make Lessor Payments shall expire at the close of business on April 3, 1979. Lessor makes no representation or warranty that such \$70,000,000 will be sufficient to make all Lessor Payments under the Lease or that Lessor will have purchased or taken title to all such Designated Assets on or prior to the close of business on such date. Lessee agrees that the obligations of Lessor in its individual capacity hereunder shall be reduced to the extent that all or any of the same are assumed by Owner Participants, if any, and that, if at any time there are Owner Participants the respective obligations of Lessor in its individual capacity and such Owner Participants shall be several and not joint in proportion to their respective interests. All payments made by Lessor to Lessee hereunder shall be made in the City of New York in Immediately Available Funds, but Lessor Payments payable directly to Vendors need not be payable in Immediately Available Funds.

5. TRANSFER OF TITLE TO DESIGNATED ASSETS FROM VENDORS TO LESSOR AND THE OWNER PARTICIPANTS, IF ANY; LESSEE'S RIGHTS; REIMBURSEMENT OF PRE-PURCHASE ADVANCES ON INSOLVENCY, ETC. OF VENDORS. Subject to the other terms, limitations and conditions hereof, Lessee hereby agrees to cause the Vendors to transfer all right, title and interest to each of the Designated Assets directly to Lessor and the Owner Participants, if any, upon delivery, completion or otherwise as may be appropriate, without title thereto vesting in Lessee at any time. Lessor hereby assigns on behalf of itself and each Owner Participant, if any, to Lessee, until such time as an Event of Default under this Lease shall have occurred and be continuing, (a) all claims for damages in respect of the Transferred or Leased Assets arising as a result of any default by a Vendor and any and all rights to compel performance by a Vendor of the terms of any contract relating to such Assets, (b) the right to demand, accept and retain all rights in and to all property (other than the Transferred and Leased Assets and other than refunds in respect thereto and to Designated Assets), data or service which any Vendor is obligated to provide or does provide pursuant to any contract with Lessee and (c) the right to obtain services, training, data and demonstration from any Vendor. Lessee agrees to take all actions which are reasonable and practical to enforce such rights. So long as no Event of Default or other event or condition which after notice or lapse of time or both would become an Event of Default shall have occurred and be continuing, Lessor agrees to assign or otherwise make available to Lessee such other rights or claims as Lessor and the Owner Participants, if any, may have (including without limitation rights under any warranty made by the Vendor thereof) with respect to the Designated, Transferred or Leased Assets other than any claim as to the validity or freedom from Encumbrances of the title passed by Vendors to Lessor. Upon request by Lessor, Lessee will assign to Lessor all its contracts with Vendors on reasonable terms specified by Lessor if necessary to preserve to Lessor the tax benefits referred to in Section 36 hereof or otherwise.

It is expressly agreed that, anything herein contained to the contrary notwithstanding: (x) the Lessee shall at all times remain liable to Vendors under all contracts with such Vendors to perform all Lessee's duties and obligations thereunder to the same extent as if this Lease had not been executed and title to the Designated Assets were not to be vested in the Lessor and the Owner Participants, if any, (y) the exercise by the Lessor of any of the rights assigned hereunder shall not release the Lessee from any of its duties or obligations under contracts with such Vendors except to the extent that such exercise by the Lessor shall constitute performance of such duties and obligations and (z) the Lessor and the Owner Participants, if any, shall not have any obligation or liability to any Vendor under any contract by reason of, or arising out of, this Lease or be obligated to perform any of the obligations or

duties of the Lessee thereunder or to make any payment (other than to make Lessor Payments for and in respect of the Designated and Transferred Assets to the extent and upon the terms and conditions set forth in this Lease) or to make any inquiry as to the sufficiency of any payment received by any Vendor or to present or file any claim or to take any other action to collect or enforce any claim for any payment hereunder. Nothing contained herein shall subject the Lessee to any liability to which it would not otherwise be subject under any contract with a Vendor or modify in any respect the Lessee's contract rights thereunder.

Title to Designated Assets shall be transferred from Vendors to Lessor and the Owner Participants, if any, by Bills of Sale effective upon receipt thereof by Lessor in New York City; *provided, however that* Invoices shall suffice to transfer title for distinct and separate transactions where the amount involved is \$5,000 or less; and *provided, further, however, that* no more than an aggregate of \$1,500,000 in Lessor Payments may be made against Invoices. Lessor will notify Lessee promptly in writing from time to time of the names of Owner Participants, if any, to be listed on or attached to Bills of Sale and Invoices by Vendors. Delivery of Designated Assets to Lessee shall be deemed to be delivery thereof to Lessor and the Owner Participants, if any. Bills of Sale and Invoices may be numbered sequentially by Lessor or by Lessee on Lessor's behalf. It is understood and agreed that Lessor shall be required to make Pre-Purchase Advances and to pay Purchase Prices only on Quarterly Transfer Dates. Lessee will use its best efforts to give notice of Quarterly Transfer Dates no more often than once in each calendar quarter. Any amounts required to be paid to Vendors during intervals between Quarterly Transfer Dates will be advanced by Lessee, subject to reimbursement by Lessor on the next succeeding Quarterly Transfer Date. Lessee shall have no title to or other interest in any Designated or Transferred Assets in respect of which Lessee has advanced funds in the intervals between Quarterly Transfer Dates.

At any time (i) if Lessor shall have made Pre-Purchase Advances or Service Payments or both to any Vendor or to reimburse Lessee for payments made to such Vendor and such Vendor shall become bankrupt or insolvent or fail or refuse for any reason to deliver, when obligated to do so, the Designated Assets in respect of which any such Advances or Payments were made or (ii) if an Event of Loss should occur with respect to any such Designated Asset or (iii) if the same shall not be delivered for any other reason then Lessee, at its expense, shall promptly thereafter repay to Lessor in Immediately Available Funds all Lessor Payments then and previously made in respect thereof with interest thereon (to the extent not otherwise then or previously recouped by Lessor) at the Minimum Commercial Lending Rate from the date or dates such Lessor Payments were made or accrued to the date of payment. In such event Lessee may, at its option, contract to purchase an equivalent Designated Asset from another Vendor for sale to Lessor and Lessor shall, subject to the terms and conditions hereof, be obligated to make Pre-Purchase Advances and Service Payments and to pay Purchase Prices in respect thereof and to purchase and lease the same as though such substitute arrangements had been the original arrangements with respect thereto.

6. GENERAL PRECONDITIONS TO LESSOR'S OBLIGATIONS. The Lessor shall not be obligated to make any Lessor Payment until the Lessor shall have received:

(a) *Tax Ruling.* A ruling or rulings, satisfactory in form and substance to Lessor and its counsel, from the Internal Revenue Service of the United States of America to the effect that the Lessor shall be entitled, with respect to the transactions contemplated in the Lease, (i) to claim the full 7% investment tax credit provided for by the Code with respect to the Lessor's Cost of the Designated Assets other than those referred to in Schedule 6 to the Lease, (ii) to take depreciation deductions with respect to the Lessor's Cost of each Designated Asset using depreciation periods of (A) 8 years for mining equipment demised hereby, if any, (B) 12 years for surface railway rolling stock demised hereby, if any, and (C) 14.5 years for terminal and loading facilities and 20 years for railroad track demised hereby, if any, pursuant to Section 167(m) of the Code and any method of depreciation allowed by Section 167(b) of the Code, (iii) to deduct interest paid by it on the Notes, (iv) to capitalize interest paid by it on the Interim Borrowings, (v) to capitalize the

commitment fees and cancellation fees, if any, paid by it or on its behalf to the Note Purchasers under the Participation Agreement, (vi) to treat the Designated Assets as having been placed in service upon the execution of an Interim or Basic Lease Supplement with respect thereto, (vii) to include in the tax basis for the Designated, Transferred and Leased Assets the Lessor's equity investment, the principal amount of the Notes and the capitalized items referred to in (iv) and (v) above capitalized by Lessor and (viii) to the further effect that the Lessor and the Noteholders will not be subject to the United States interest equalization tax with respect to this Lease, the Coal Purchase Agreement, the Participation Agreement, the Notes or the Indenture or any transaction contemplated hereby or thereby and such ruling, to the extent received on or prior to the date of execution and delivery hereof, shall not have been revoked or modified in any manner which, in the Lessor's judgment, is materially adverse to Lessor, the Note Purchasers, the Noteholders or the holders of the Deposit Receipts.

(b) *Opinion of Pennsylvania Counsel.* An opinion of Kirkpatrick, Lockhart, Johnson & Hutchison, satisfactory in form and substance to Lessor and its counsel, dated the date of the first Quarterly Transfer Date, to the effect that:

(i) Each of the Designated Assets constitutes, and each Transferred and Leased Asset will, after transfer of title thereto to Lessor, be and remain, personal property within the meaning of applicable existing Pennsylvania law (except as may otherwise be provided for purposes of state and local taxation and the exercise of the power of eminent domain).

(ii) Lessor will not be required to qualify to do business in the Commonwealth of Pennsylvania as a result of the purchase and lease of, and holding of title to, the Designated, Transferred or Leased Assets, all in accordance with the provisions hereof.

(iii) Neither Lessor nor any Affiliate of Lessor will as a result of such purchasing, leasing and holding be subject to any existing state, municipal or other capital stock, gross receipts, corporate rentals, income, profit or franchise taxes, levies or imposts imposed by the Commonwealth of Pennsylvania or any jurisdiction therein or instrumentality thereof except the Pennsylvania corporation income tax and the Pennsylvania sales tax.

(iv) Except for (A) the recording in the Office of the Recorder of Deeds of Greene County, Pennsylvania, by Lessee of the Agreement and Disclaimer (which recording has been duly and validly effected), (B) the filing of financing statements with respect to the Non-Recourse Purchase and Lease Agreement (not relating to surface railway rolling stock) in (1) the Office of the Secretary of the Commonwealth of Pennsylvania, (2) the Office of the Recorder of Deeds of Greene County, Pennsylvania, (3) the Office of the Secretary of the State of New York and (4) the office of the City Register of the City of New York in and for New York County (which filings have been duly and validly made), (C) the filing of a duly executed and acknowledged original and two exact counterparts of the Non-Recourse Purchase and Lease Agreement (relating to surface railway rolling stock) in the Office of the Secretary of the Interstate Commerce Commission and assuming (v) all necessary filings and indexings have been duly filed and indexed in the manner contemplated by Sections 401 through 403, inclusive, of the Mechanics' Lien Law of 1963 of Pennsylvania, P.L. 1175, No. 497 of 1963 (49 C.P.S.A. §§ 1401-1403, inclusive), as the same may be re-enacted or amended from time to time, or that rights to file claims under such Law have been duly waived in accordance therewith, and the Lessee will discharge all such liens which may appear of record within sixty days of their respective recordings by bond, posting security with the appropriate court, or otherwise, (w) insofar as such opinion may be deemed to cover replacement Parts and replacement Leased Assets that Lessee will comply with the terms hereof in respect of such replacements, (x) due delivery to Lessor of Bills of Sale and Invoices (and, in the case of Invoices, assuming that the representations set forth in Bills of Sale are deemed to have been made implicitly in Invoices), (y) that Lessee has not been and will not be a Vendor and (z) that the Transferred

and Leased Assets are and will be situated only in Greene County, Pennsylvania in the general area of the Mine and Loading Site, no further action, or recording, filing or delivery of any document, will be necessary or advisable in order to establish and perfect the exclusive title to, and interest in, the Transferred or Leased Assets of Lessor and the Owner Participants, if any, as against the Vendors thereof, Lessee, Hydro or any third parties, subject to this Lease and the Indenture. Such opinion shall also either specify all existing requirements for re-recording or re-filing such instruments and filing continuation statements with respect to such financing statements or state that there are no such existing requirements.

(v) The assignment to the Lessor of all of the Lessee's right, title and interest in and to Section 6.1 of the Coal Purchase Agreement effected by Section 13 of this Lease creates a valid security interest in and to such right, title and interest.

(vi) Financing statements and necessary filings with the Secretary of the Interstate Commerce Commission with respect to the assignment referred to in clause (v) above have been duly filed or made in such manner and in such places (specifying the same) as are required to establish, preserve and protect such assignment as a valid and perfected security interest in all of the Lessee's right, title and interest in and to Section 6.1 of the Coal Purchase Agreement, and no filing or recording of any other document is necessary or advisable in order to establish and perfect such security interest as against Lessee or anyone claiming by, through or under the Lessee in any applicable jurisdiction. Such opinion shall either specify all existing requirements for filing continuation statements with respect to such financing statements or re-filing such documents with the Secretary of the Interstate Commerce Commission or shall state that there are no such existing requirements.

(c) *Opinion of Counsel for Lessee.* An opinion of counsel for the Lessee, satisfactory in form and substance to Lessor and its counsel, dated the date of the first Quarterly Transfer Date, to the effect that:

(i) The Lessee is a corporation duly organized and validly existing in good standing under the laws of the State of Delaware and has the corporate power and authority to own or hold under lease its properties and to enter into and perform its obligations under this Lease, the Agreement and Disclaimer and the Coal Purchase Agreement and has not failed to qualify to do business in any jurisdiction in which failure to so qualify would materially affect its ability to perform its obligations under this Lease, the Agreement and Disclaimer and the Coal Purchase Agreement.

(ii) The execution, delivery and performance of this Lease, the Coal Purchase Agreement and the Agreement and Disclaimer and the execution and filing of the financing statements and filing with the Interstate Commerce Commission referred to in (b)(iv) and (vi) above have been duly authorized by all necessary corporate action on the part of the Lessee, do not require any stockholder approval, or approval, waiver, consent or notice to or by any trustee or holders of any indebtedness or obligations of the Lessee, and do not and will not contravene any existing law, governmental rule or regulation binding on the Lessee or any order or judgment known to such counsel and binding on Lessee or the certificate of incorporation or by-laws of the Lessee or contravene the provisions of, or constitute a default, or result in the creation of any Encumbrance upon the property of the Lessee, under any indenture, mortgage, contract or other agreement or instrument to which the Lessee is a party or by which it or its property may be bound or affected.

(iii) Neither the execution and delivery by the Lessee of this Lease or the Coal Purchase Agreement or the Agreement and Disclaimer nor the consummation by the Lessee of any of the transactions contemplated hereby or thereby requires the consent or approval of, the giving of notice to, or the registration with, or the taking of any other action in respect of, any United States federal, state or local governmental authority or agency, except for (a) building,

construction and other permits, consents and other approvals necessary or advisable for the development, construction and operation of the Mine and the Loading Site, and (b) such other consents, approvals, notices or other actions as are expressly contemplated by the terms hereof or of the Participation Agreement, the Coal Purchase Agreement or the Indenture (such opinion to specify the same and state that any of the same required to be obtained or effected prior to such Quarterly Transfer Date have been duly obtained or effected).

(iv) This Lease, the Coal Purchase Agreement, the Participation Agreement and the Agreement and Disclaimer have each been duly executed and delivered by the Lessee, and each constitutes a legal, valid and binding obligation of the Lessee in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally.

(v) The assignment to the Lessor and the Owner Participants, if any, of all of the Lessee's right, title and interest in and to Section 6.1 of the Coal Purchase Agreement effected by Section 13 of this Lease creates a valid security interest in and to such right, title and interest, subject to no Encumbrances.

(vi) Financing statements and necessary filings with the Secretary of the Interstate Commerce Commission with respect to the assignment referred to in clause (v) above have been duly filed or made in such manner and in such places (specifying the same) as are required to establish, preserve and protect such assignment as a valid and perfected security interest in all of the Lessee's right, title and interest in and to Section 6.1 of the Coal Purchase Agreement, and no filing or recording of any other document is necessary or advisable in order to establish and perfect such security interest as against Lessee or anyone claiming by, through or under the Lessee in any applicable jurisdiction. Such opinion shall either specify all existing requirements for re-recording or re-filing such instruments or filing continuation statements with respect to such financing statements or shall state that there are no such existing requirements.

(vii) There are no pending or threatened actions or proceedings before any court, administrative agency or other tribunal which, if decided adversely to Lessee, will materially affect the ability of the Lessee to perform its obligations under this Lease or the Participation Agreement or, if any such actions or proceedings are pending or threatened, they will not result in any material adverse effect on such ability of the Lessee.

(d) *Opinion of Counsel for Hydro.* An opinion of counsel for Hydro, satisfactory in form and substance to Lessor and its counsel, dated the first Quarterly Transfer Date, to the effect that:

(i) Hydro validly exists in good standing as a body corporate under The Power Commission Act and has full power, authority and legal right to enter into and perform the Coal Purchase Agreement, the Participation Agreement and the Hydro Consent and Agreement.

(ii) The Coal Purchase Agreement, the Participation Agreement and the Hydro Consent and Agreement have each been duly authorized by all necessary corporate action of Hydro, each has been duly executed and delivered by Hydro and each constitutes the legal, valid and binding obligation of Hydro in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally.

(iii) Hydro has been duly authorized by the Lieutenant Governor in Council of Ontario to enter into the Coal Purchase Agreement and no further action, waiver or consent of any agency or official of the Province of Ontario or Canada is required in connection with the Coal Purchase Agreement, the Participation Agreement or the Hydro Consent and Agreement.

(iv) The execution and delivery by Hydro of the Hydro Consent and Agreement, the Participation Agreement and the Coal Purchase Agreement do not require any approval, waiver,

consent or notice to any trustee or holder of any indebtedness or obligations of Hydro, as such, and do not and will not contravene any existing law, governmental rule, regulation or order binding on Hydro or contravene the provisions of, or constitute a default, or result in the creation of any Encumbrance upon the property of Hydro under any indenture, mortgage, contract or other agreement or instrument to which Hydro is a party or by which it or its property is bound.

(v) Insofar as the existing laws of Canada and Ontario are concerned, (A) the submission to jurisdiction and consent to service of process set forth in the Hydro Consent and Agreement are valid and effective, (B) the irrevocable appointment of United States Corporation Company at its office in the Borough of Manhattan in the City and State of New York as Hydro's agent for service of process has been duly and validly made and if service of process is made and notice duly given to Hydro as provided in the Hydro Consent and Agreement, personal jurisdiction over Hydro will be validly obtained in respect of any suit, action or proceeding arising out of or relating to obligations of Hydro under Section 6.1 of the Coal Purchase Agreement, this Lease, the Participation Agreement or the Hydro Consent and Agreement instituted in any state or federal court in the United States which is competent under applicable law with respect thereto, and (C) neither the defense of sovereign immunity nor any similar defense in any such suit, action or proceeding is available to Hydro under the existing laws of either Ontario or Canada.

(e) *No Consent of Officials.* Lessor either (i) shall have received an opinion of counsel for Hydro, dated the first Quarterly Transfer Date, satisfactory in form and substance to Lessor and its counsel, to the effect that no provisions of the Power Commission Act or other law applicable to Hydro require the consent of any official of Ontario or Canada or any political subdivision or other instrumentality thereof to the commencement or maintenance of suits, actions and other proceedings against Hydro or (ii) in its sole discretion shall be otherwise satisfied that no such consent will be required, or, if required, will be promptly and unconditionally given, in the event of the commencement or maintenance by Lessor of any such suit, action or other proceeding.

(f) *Opinion of Ontario Counsel for Lessor.* An opinion of Blake, Cassels & Graydon, special counsel to Lessor, satisfactory in form and substance to Lessor and its counsel, dated the first Quarterly Transfer Date, to the same effect as the matters set forth in (d) and (e)(i) above (unless Lessor, in its sole discretion, shall elect to rely on (e)(ii) above) and also as to such other matters of the laws of Canada and Ontario as Lessor or its counsel may reasonably request.

(g) *Other Documents and Opinions of Counsel.* Such other opinions of counsel and other documents and evidence relating to the authorization and validity of this Lease, the Coal Purchase Agreement, the Hydro Consent and Agreement, the Participation Agreement, the Notes, the Indenture, tax matters and other pertinent matters as Lessor and its counsel may reasonably request.

(h) *Evidence of Recording and Filing.* Certified copies (or other evidence of due recording or filing in compliance herewith satisfactory to Lessor and its counsel) of (i) the Agreement and Disclaimer, this Lease as recorded, and financing statements as filed, in the manner specified in Subsection (b)(iv) above and (ii) the financing statements and Interstate Commerce Commission filings referred to in Subsection (b)(vi) above indicating that the Agreement and Disclaimer, this Lease and such financing statements have been duly filed in the manner contemplated by such Subsections.

7. **LESSEE LICENSED IN RESPECT OF TRANSFERRED ASSETS PRIOR TO COMMENCEMENT OF INTERIM OR BASIC TERMS.** From and after the delivery of Bills of Sale and Invoices to Lessor until the commencement of the Interim Term (or Basic Term if there is no Interim Term) of each Transferred Asset, Lessee is hereby licensed to possess, hold and occupy the same, subject to the terms, limitations, conditions and provisions hereof; *provided, however*, that Lessee shall not be authorized to make any use of any Designated, Transferred or Leased Asset prior to the commencement of the Interim Term (or Basic Term if there is no Interim Term) with respect thereto.

8. PAYMENTS; QUARTERLY TRANSFER DATES; LESSEE REPAYMENTS TO LESSOR IN CERTAIN CIRCUMSTANCES. The obligation of Lessor to make Pre-Purchase Advances and Service Payments and the obligations of Lessor and the Owner Participants, if any, to pay Purchase Prices on Quarterly Transfer Dates shall be subject to the satisfaction, on the Quarterly Transfer Date on which such payments are to be made, of each of the following conditions:

(a) *Prior Notice*. Lessor shall have received at least 12 Business Days' prior written notice specifying the aggregate amounts to be paid and the date of the Quarterly Transfer Date for payment, accompanied (if practicable) by drafts of the certificates referred to below.

(b) *General Certificate of Authorized Lessee Representative*. Lessor shall have received a certificate of an Authorized Lessee Representative dated such Quarterly Transfer Date to the effect that:

(i) The representations and warranties of the Lessee set forth in Section 2 of this Lease are true and correct on such Quarterly Transfer Date as though made on such Quarterly Transfer Date.

(ii) On such Quarterly Transfer Date there is no Event of Default or other condition or event which after notice or lapse of time or both would become an Event of Default.

(iii) Each Designated or Transferred Asset in respect of which a payment is being made is either a special-purpose structure readily capable of being dismantled, transported and re-used without material damage thereto or to the underlying real property or is not installed or being installed in or attached or being attached to any building or located above, upon or under any real property in such manner as to become part of such building or real property so as to preclude the removal thereof without material injury to such Designated or Transferred Asset or to such building or real property and Lessor's payments do not include any payments for or in respect of foundations, pilings, footings, concrete pads or similar supports or grouting.

(iv) There has been no amendment, waiver or modification of any provision of the Coal Purchase Agreement to which consent of the Lessor is required pursuant to the provisions of the Coal Purchase Agreement which has not been duly obtained.

(v) Nothing has occurred which materially and adversely affects the ability of the Lessee to perform its obligations under this Lease or the Participation Agreement.

(vi) Each Transferred Asset in respect of which a payment is to be made is covered by insurance as required by Section 17 hereof.

(c) *Additional Certification as to Pre-Purchase Advances*. With respect to Pre-Purchase Advances to be made on such Date, Lessor shall have received a certificate of an Authorized Lessee Representative dated such Quarterly Transfer Date:

(i) Stating the name and address of, and the amount to be paid to, each payee.

(ii) Stating that each such amount is properly payable, is a progress, installment or interim payment and not a final payment, has been necessarily incurred in connection with the Designated Asset in respect of which payment is being made and is unpaid.

(d) *Bills of Sale, Invoices and Additional Certification as to Purchase Prices*. With respect to Purchase Prices to be paid on such Date, Lessor shall have received the Bills of Sale or Invoices or both for the Designated or Transferred Assets involved, and a certificate of an Authorized Lessee Representative dated such Quarterly Transfer Date:

(i) Identifying the Schedule annexed hereto on which such asset is listed and the group of which it is a member and specifying and briefly describing the Designated, Transferred or Leased Asset in respect of which such Purchase Price is being paid, specifying the total aggregate amount of such Purchase Price and the portion of such Purchase Price, if any, to be retained by Lessor pending further performance by the Vendor or for any other reason (specifying the same) and identifying Pre-Purchase Advances, if any, previously made in respect thereof.

(ii) Stating that neither such Purchase Price nor any Pre-Purchase Advances made in respect thereof included any costs related to grading, excavating or otherwise altering the contour of any real estate nor any costs of or relating to footings, pilings, foundations, concrete pads or similar supports to which such Designated or Transferred Assets are attached nor any costs of grouting.

(iii) Stating that each such Designated or Transferred Asset has been manufactured or constructed in accordance with the specifications, designs, schematics, drawings or other descriptions, if any, required by the United States Bureau of Mines or the appropriate Pennsylvania authorities, that each such Asset has received any necessary approval, certification, acceptance or other authorization from such governmental agencies or that such approval, certification, acceptance or other authorization will be obtained in the field prior to use and that the appropriate markings, approval plate, certification plate, permissibility plate or other identification required by such governmental authorities is printed upon, attached to or otherwise appears on each such Asset or that such Asset does not require such approval, certification, acceptance or other authorization or such markings, approval plate, certification plate, permissibility plate or other identification.

(e) *Title Opinion of Lessee's Counsel.* Lessor shall have received an opinion of counsel for the Lessee that the Lessor and the Owner Participants, if any, have good and marketable title free and clear of all Encumbrances to each Designated and Transferred Asset in respect of which a Purchase Price is being paid *provided, however*, that the opinion required by this Section 8(e) need not cover title to any Asset which is covered by the opinion referred to in Section 8(g) hereof. In expressing such opinion, such counsel may rely on title reports of reputable title companies, on certificates of officers of Lessee, Lessor and the Owner Participants, if any, as to matters of fact (including the taking of no action by the Lessee, the Lessor or the Owner Participants, if any, respectively, which would impair title to any such Assets or create any Encumbrance thereon), and on opinions of other counsel (including counsel for any contractor or Vendor) as to the state of title conveyed to the Lessor and the Owner Participants, if any, and as to the validity of any Bill of Sale or Invoice, and may assume that any such Asset with respect to which the sum of the Purchase Price and all Pre-Purchase Advances and Service Payments does not exceed \$100,000, and which is sold to the Lessor and the Owner Participants, if any, new by a Vendor which is a merchant who deals in goods of that kind was solely owned by such Vendor at the time of sale, and that the Bill of Sale or Invoice covering such Asset, if the same is purportedly executed by such Vendor (or, in the case of Invoices, is on a printed form bearing the Vendor's name), is an effective instrument for the conveyance of title to such Asset to the Lessor and the Owner Participants, if any.

(f) *Additional Certificate as to Service Payments.* With respect to Service Payments to be made on such date, Lessor shall have received a certificate of an Authorized Lessee Representative dated such Quarterly Transfer Date:

(i) Stating the name and address of, and the amount to be paid to, each payee and specifying the portion thereof, if any, to be retained by Lessor pending further performance by the Vendor or for any other reason (specifying the same).

(ii) Summarizing the services in respect of which the payment is made (or attaching invoices or schedules containing such summary or summaries).

(iii) Stating (A) that each such amount is properly payable, (B) has been necessarily incurred in respect of the particular Asset in respect of which payment is being made, (C) is unpaid and (D) includes no payments related to grading, excavating or otherwise altering the contour of any real estate nor any costs relating to footings, pilings, foundations, concrete pads or similar supports nor any costs of grouting.

(g) *Contemporaneous Note Purchases.* If such Quarterly Transfer Date is a date on which a closing is to be held as specified pursuant to the Participation Agreement, the Lessor shall on such

date have received (i) executed copies of the certificates of officers referred to in Sections 4F and 4G of the Participation Agreement, (ii) signed copies of the opinions of counsel called for by Sections 4I, 4J, 4K and 4L of the Participation Agreement together with appropriate authorization to Lessor and the Owner Participants, if any, to rely on such opinions and (iii) the proceeds of the sale of the Notes to be made on such date.

(h) *No Illegality.* The Lessor shall be satisfied that no change shall have occurred after the date of this Lease in applicable law or regulations thereunder or interpretations thereof by appropriate regulatory authorities and no opinion of any court shall have been rendered which would make it unlawful under applicable law for the Lessor to purchase, lease and hold each Designated, Transferred or Leased Asset in respect of which a Pre-Purchase Advance or Service Payment is being made or a Purchase Price is being paid or to perform its obligations hereunder.

(i) *No Change in Tax Law.* No amendment, modification, addition or change shall have been made in or to the provisions of Section 38 or 167 of the Code or any other provision of the Code or the regulations thereunder, and no ruling of the Internal Revenue Service or opinion of any court shall have been rendered which, in the opinion of the Lessor or its counsel, would preclude the Lessor and the Owner Participants, if any, from claiming the tax benefits for which it is or they are entitled to indemnification under Section 36 hereof.

(j) *Hydro Certificate.* Lessor shall have received a certificate of a senior financial or accounting officer of Hydro to the effect that (i) there has been no material adverse change in the financial position or results of operations of Hydro as compared with such financial position at the end of, and results of operations for, the immediately preceding fiscal year of Hydro, (ii) nothing has occurred which does or will materially and adversely affect the validity and enforceability of, or the ability of Hydro to perform its obligations under, the Hydro Consent and Agreement, Section 6.1 of the Coal Purchase Agreement or the Participation Agreement and (iii) there are no actions or proceedings pending or to the knowledge of such officer threatened before any court, administrative agency or other tribunal which will materially and adversely affect the performance by Hydro of its obligations under, or the validity or enforceability of, Section 6.1 of the Coal Purchase Agreement, the Hydro Consent and Agreement or the Participation Agreement.

It is understood that the Lessor may, in its sole discretion and at Lessee's sole expense, request an opinion of counsel satisfactory to it in regard to any of the foregoing matters specified in (b), (d) (iii), (h) and (i) above. In addition, in regard to Encumbrances, Lessor may, in its sole discretion and at Lessee's sole expense, request a title report from a reputable title company satisfactory to Lessor to the effect that any Designated or Transferred Asset in respect of which a Purchase Price is being paid by Lessor is free of Encumbrances and such written assurances, waivers, releases and other documents and information with respect to any exception contained in such report as shall satisfy Lessor that the interest of it and the Owner Participants, if any, in such Designated or Transferred Asset is adequately protected.

In the event that Lessor (and the Owner Participants, if any) shall not be obligated to make a Pre-Purchase Advance or a Service Payment or pay a Purchase Price in respect of any Designated, Transferred or Leased Asset (i) because one or more of the preceding conditions in this Section 8 shall not have been or be satisfied with respect thereto or (ii) because the aggregate Lessor Payments then or theretofore made have equalled \$70,000,000, then Lessee shall within 30 days purchase title thereto from Lessor and the Owner Participants, if any (if Lessor and the Owner Participants, if any, have title) and repay to Lessor in Immediately Available Funds all Lessor Payments relating thereto with interest thereon (to the extent not otherwise then or previously recouped by Lessor) at the Minimum Commercial Lending Rate from the date or dates such Lessor Payments were made or accrued to the date of payment.

9. INTERIM LEASE SUPPLEMENTS; REPAYMENT OF LESSOR PAYMENTS AT CERTAIN DATES IF CERTAIN BASIC TERMS DO NOT COMMENCE. Unless it shall be appropriate to initiate leasing under a Basic Lease Supplement and subject to all the terms, limitations, conditions and provisions hereof, Lessee

shall lease from Lessor and the Owner Participants, if any, and Lessor and the Owner Participants, if any, shall lease to Lessee, each Designated or Transferred Asset pursuant to an Interim Lease Supplement upon the satisfaction of each of the following conditions precedent:

(a) *Satisfaction of Other Conditions.* Each of the conditions specified in Sections 6 and 8 shall contemporaneously therewith or prior thereto have been fully satisfied with respect to the applicable Designated or Transferred Asset.

(b) *Certificate of Authorized Lessee Representative.* Lessor shall have received a certificate of an Authorized Lessee Representative stating (i) that each applicable Designated or Transferred Asset (A) has been fully completed and tested, (B) is in all respects equipped to operate and has not previously been operated (except for testing) and (C) is ready and suitable for immediate service and (ii) setting forth the specific dollar amounts of Pre-Purchase Advances, Service Payments and Purchase Prices then or theretofore made which are allocable to each Designated or Transferred Asset then being demised under an Interim Lease Supplement.

Lessee agrees to submit the certificate referred to in Section 9(b) above with respect to each Designated or Transferred Asset promptly after the conditions in Sections 9(a) and 9(b)(i) hereof are satisfied. Lessee shall deliver to Lessor in the City of New York such certificates together with Interim Lease Supplements (with schedules attached) executed by Lessee. Interim Terms shall commence on or as of the date specified in such Supplements. The term of each Interim Lease Supplement shall expire at the earlier of (x) the next closing under the Participation Agreement at which Lessee and Lessor shall enter into a Basic Lease Supplement in replacement thereof or (y) the close of business on April 3, 1979.

After the commencement of the Interim Term for each Leased Asset, Lessee shall pay Interim Rent therefor quarterly in arrears starting on the next succeeding Quarterly Payment Date after the commencement of each such Interim Term. Each Interim Lease Supplement shall provide for payment of Interim Rent for each Leased Asset thereby demised quarterly in arrears in installments of the applicable percentage of Lessor's Cost specified in Schedule 3 or Schedule 6 hereto as such percentages appear on such Schedules as they are annexed hereto at the time of execution and delivery hereof and not as any or all of the same may be recalculated from time to time pursuant to Section 10 hereof. Interim Rent shall accrue from the first calendar day of the calendar quarter in respect of which such Interim Rent is payable; *provided, however*, that in the case of any Interim Term that commences on a day other than such a first calendar day, the first installment of Interim Rent shall accrue on a daily basis from such date of commencement to the last calendar day of the calendar quarter in which such Interim Term commenced and thereafter as aforesaid. Interim Rent for any Leased Asset which becomes leased under a Basic Lease Supplement shall cease to accrue on the last calendar day of the calendar quarter immediately preceding the quarter in which the Basic Term for such Leased Asset commences.

If at the earlier of the close of business on April 3, 1979, or the time of expiration of the last Interim Term of the last Leased Asset leased under an Interim Lease Supplement there shall then exist (i) any Designated Assets in respect of which any Pre-Purchase Advances or Service Payments have been made or (ii) any Transferred or Leased Assets which are not leased on such date under Basic Lease Supplements, then Lessee on such date shall purchase title thereto from Lessor and the Owner Participants, if any (if Lessor and the Owner Participants, if any, have title thereto) and repay to Lessor in Immediately Available Funds all Lessor Payments then or theretofore made in relation to such Assets with interest (to the extent not otherwise then or previously recouped by Lessor) at the Minimum Commercial Lending Rate from the date or dates such Lessor Payments were made or accrued to the date of commencement of the Interim Term thereof, if any, or the date of repayment if there has been no Interim Term plus, in the case of Leased Assets leased under Interim Lease Supplements not re-leased under Basic Lease Supplements, an amount equal to all accrued but unpaid Interim Rent.

10. BASIC LEASE SUPPLEMENTS. At each closing under the Participation Agreement Lessee shall tender to Lessor Basic Lease Supplements to supersede Interim Lease Supplements previously entered into. To the extent practicable Lessee shall tender Basic Lease Supplements to supersede Interim Lease Supplements in the same order that Interim Lease Supplements were entered into. Subject to the satisfaction of the conditions set forth in Section 11 hereof and the other terms, limitations, conditions and provisions hereof, Lessor shall enter into Basic Lease Supplements when they are tendered by Lessee. In the event that, on a date on which there occurs a closing under the Participation Agreement, there shall be any Designated or Transferred Assets which are not or have not been leased under Interim Lease Supplements but with respect to which all the conditions referred to in Section 9 hereof and all conditions for the demise thereof under Basic Lease Supplements are satisfied, then such Assets shall, subject to the satisfaction of the conditions set forth in Section 11 hereof, be leased to Lessee on such date by the execution and delivery of Basic Lease Supplements. The Term of each Basic Lease Supplement shall begin on the date of the closing under the Participation Agreement at which such Basic Lease Supplement is executed and delivered and shall (except as provided in the next sentence) expire on the appropriate anniversary of the first calendar day of the calendar quarter in which such Basic Lease Supplement is executed and delivered, as determined by reference to Schedule 3 or 6 and as to be specified in such Basic Lease Supplement; *provided, however*, that in the case of Leased Assets which have been previously leased under Interim Lease Supplements, the Term of each Basic Lease Supplement covering such Leased Assets shall be deemed to have commenced immediately after the expiration of the Interim Term thereof. The expiration date for the Basic Term of each Leased Asset leased under a Basic Lease Supplement which has previously been leased under an Interim Lease Supplement shall be the same date that the same would have expired if the Basic Term had commenced on the first day of the calendar quarter in which the Interim Term commenced; in the event that the amount of time remaining between the date of execution and delivery of a Basic Lease Supplement and January 1, 2007 shall be less than the lease Term specified for the Asset or Assets demised thereby on Schedule 3 or Schedule 6 annexed hereto, then the expiration date of the Term thereof shall be January 1, 2007. Each Basic Lease Supplement shall provide for payment of Basic Rent for each Leased Asset quarterly in arrears in installments of the applicable percentage of Lessor's Cost specified in Schedule 3 or Schedule 6 hereof *provided, however*, that in the case of any Leased Asset (i) which has been leased under an Interim Lease Supplement or (ii) the expiration date for the Term of which has been shortened to January 1, 2007, as referred to above, the applicable percentage of Lessor's Cost for purposes of determining Basic Rent shall not be that specified in Schedule 3 or 6 but shall be that percentage which Lessor shall have recalculated and which shall be specified in the Basic Lease Supplement as the Basic Rent to be received by Lessor and the Owner Participants, if any, which shall take account of the shorter Basic Term. In each case where Lessor recalculates Basic Rent as provided above, Lessor shall also recalculate the Stipulated Loss Values, Termination Values, Adjusted Termination Values and Optional Termination Values so as to take account of the shorter Basic Term; *provided, however*, that (i) such recalculated Basic Rent shall be no lower than the minimum amounts required by the proviso to Section 14(b) hereof and (ii) such recalculated values shall be no lower than the minimum amounts referred to in the provisos to the definitions of such values in Section 1 hereof. All such recalculated rents and values shall be specified in the appropriate Basic Lease Supplements. Each quarterly installment of Basic Rent shall accrue from the first calendar day of the calendar quarter in respect of which such Basic Rent is payable; *provided, however*, that in the case of any Leased Asset leased under a Basic Lease Supplement (i) with respect to which there was no Interim Term and (ii) the Basic Term of which commences on a day other than the first calendar day of a quarter then Basic Rent shall accrue from such first calendar day, but the first installment thereof shall be adjusted by Lessor (whose determination shall be final) to eliminate therefrom (i) an amount equal to interest on the Notes that would have accrued for the period from such first calendar day to and including the day preceding the date of commencement of such Basic Term and (ii) an amount equal to the portion thereof that would have been payable to Lessor in respect of such period net of payments of interest on and principal of the Notes.

11. SPECIFIC CONDITIONS TO LESSOR'S OBLIGATIONS TO ENTER INTO BASIC LEASE SUPPLEMENTS. The obligations of Lessor from time to time to enter into Basic Lease Supplements shall be subject to the satisfaction at the time of execution and delivery thereof of each of the following conditions precedent:

(a) *Notice; Tender of Basic Lease Supplements and Documents Called for by Participation Agreement.* Lessee shall have given to Lessor a notice at least 10 Business Days in advance of the date on which Lessor must give the notice required by Section 4A of the Participation Agreement (such notice to contain, to the maximum extent practicable, the information required to be contained in the notice called for by Section 4A of the Participation Agreement) and tendered Basic Lease Supplements as required by Section 10 hereof, and the Lessor shall have received:

(i) Executed copies of the certificates of officers referred to in Sections 4F and 4G of the Participation Agreement.

(ii) Signed copies of the opinions of counsel called for by Sections 4I, 4J, 4K and 4L of the Participation Agreement together with appropriate authorization to Lessor and the Owner Participants, if any, to rely on such opinions.

(iii) The proceeds of the sale of Notes relating to the Designated, Transferred and Leased Assets then being leased under Basic Lease Supplements.

(iv) All accrued Interim Rent due and unpaid up to such date, if any.

(b) *Certificate of Authorized Lessee Representative.* Lessor shall have received a Certificate of an Authorized Lessee Representative dated the date of such transactions to the effect that:

(i) The representations and warranties of the Lessee set forth in Section 2 of this Lease are true and correct on such date as though made on such date.

(ii) On such date there is no Event of Default or other condition or event which after notice or lapse of time or both would become an Event of Default.

(iii) Each Designated, Transferred or Leased Asset then being leased under a Basic Lease Supplement is either a special-purpose structure readily capable of being dismantled, transported and re-used without material damage thereto or to the underlying real property or is not installed in or attached to any building or located above, upon or under any real property in such manner as to become part of such building or real property so as to preclude the removal thereof without material injury thereto or to such building or real property and the interest of Lessor and the Owner Participants, if any, therein does not include any interest in any foundations, pilings, footings, grouting, concrete pads or similar supports.

(iv) There has been no amendment, waiver or modification of any provision of the Coal Purchase Agreement to which consent of the Lessor is required pursuant to the provisions of the Coal Purchase Agreement and which consent has not been duly given.

(v) Nothing has occurred which materially and adversely affects the ability of the Lessee to perform its obligations under this Lease or the Participation Agreement.

(vi) Each Designated, Transferred or Leased Asset then being initially demised under a Basic Lease Supplement, if any (A) has been fully completed and tested, (B) is in all respects equipped to operate, (C) is ready and suitable for immediate service (or is in service pursuant to an Interim Lease Supplement) and (D) is not subject to any retention of any portion of any Lessor Payment in respect thereof.

(vii) The information therein set forth concerning the specific dollar amount of Pre-Purchase Advances, Service Payments and Purchase Prices then or theretofore made which are allocable to each Designated or Transferred Asset then being initially demised under a Basic Lease Supplement, if any, is true, correct and complete.

(viii) Each Designated, Transferred or Leased Asset then leased or being leased under a Basic Lease Supplement is covered by insurance as required by Section 17 hereof.

(c) *No Illegality.* The Lessor shall be satisfied that no change shall have occurred after the date of this Lease in applicable law or regulations thereunder or interpretations thereof by appropriate regulatory authorities, and no opinion of any court shall have been rendered which would make it unlawful under applicable law for the Lessor to purchase, lease or hold each Designated, Transferred or Leased Asset then being demised under a Basic Lease Supplement or to perform its obligations hereunder.

(d) *Satisfaction of Certain Prior Conditions.* With respect to any Purchase Price or Service Payment to be paid on such date, the conditions set forth in Sections 8(d), 8(e) and 8(f) hereof shall be or have been fully satisfied in a manner satisfactory to Lessor.

(e) *No Change in Tax Law.* No amendment, modification, addition or change shall have been made in or to the provisions of Section 38 or 167 of the Code or any other provision of the Code or the regulations thereunder, and no ruling of the Internal Revenue Service or opinion of any court shall have been rendered which, in the opinion of the Lessor or its counsel, would preclude the Lessor and the Owner Participants, if any, from claiming the tax benefits for which it is or they are entitled to indemnification under Section 36 hereof with respect to Assets which have not been leased under Interim Lease Supplements.

(f) *Hydro Certificate.* Lessor shall have received a certificate of a senior financial or accounting officer of Hydro to the effect (i) that there has been no material adverse change in the financial position or results of operations of Hydro as compared with such financial position at the end of and results of operations for, the immediately preceding fiscal year of Hydro, (ii) nothing has occurred which does or will materially and adversely affect the validity and enforceability of, or the ability of Hydro to perform its obligations under, the Hydro Consent and Agreement, Section 6.1 of the Coal Purchase Agreement and the Participation Agreement and (iii) there are no actions or proceedings pending or to the knowledge of such officer threatened before any court or administrative agency, which will materially and adversely affect the performance by Hydro of its obligations under, or the validity or enforceability of, Section 6.1 of the Coal Purchase Agreement, the Hydro Consent and Agreement or the Participation Agreement.

It is understood that the Lessor may, in its sole discretion and at Lessee's sole expense, request an opinion of counsel satisfactory to it in regard to any of the foregoing matters specified in (b), (c), (d) and (e) above and, in regard to Encumbrances, Lessor may, in its sole discretion and at Lessee's sole expense, request a title report from a reputable title company satisfactory to Lessor to the effect that any Designated or Transferred Asset in respect of which a Purchase Price is being paid by Lessor is free of Encumbrances and such written assurances, waivers, releases and other documents and information with respect to any exception contained in such report as shall satisfy Lessor that the interest of it and the Owner Participants, if any, in such Designated, Transferred or Leased Asset is adequately protected.

12. **QUIET ENJOYMENT; TERM.** The Lessor hereby agrees that it will not take any action, other than pursuant to Sections 27 and 28 of this Lease, to prevent the Lessee from having quiet and peaceable possession and enjoyment of the Transferred and Leased Assets during the Term of this Lease and will, at the request of the Lessee, and at the Lessee's sole cost, cooperate with the Lessee in order that the Lessee may have quiet and peaceable possession and enjoyment of the Transferred and Leased Assets during such Term, *provided, however,* that any failure by Lessor to comply herewith shall not give Lessee any right to cancel or terminate this Lease, or to abate, reduce or make deduction from or offset against the Rent or to fail to perform or comply with any other term or condition hereof. The Term of this Lease shall expire on January 1, 2007 unless earlier terminated pursuant hereto.

13. **ASSIGNMENT OF SECTION 6.1 OF COAL PURCHASE AGREEMENT.** (a) *Assignment of Certain Rights.* Lessee hereby presently and irrevocably assigns, transfers and sets over to Lessor (with the right in Lessor to re-assign undivided interests therein to the Owner Participants, if any) all of Lessee's right, title and interest in, to and under (but none of Lessee's duties, liabilities or obligations under)

Section 6.1 of the Coal Purchase Agreement and the proceeds thereof, including without limitation all rights of action accrued or hereafter to accrue to Lessee thereunder, and in and to all payments to be received by Lessee pursuant to such Section 6.1. Lessor is hereby irrevocably granted full power and authority, in the name of Lessee or otherwise, to enforce, by any action, suit or proceeding at law or in equity or otherwise for specific performance or for damages or otherwise, the obligations of Hydro under such Section 6.1, and to collect, receive and receipt for all such payments. All moneys collected by Lessor pursuant to the assignment contained in this Section 13 shall be applied against Lessee's obligation to make the corresponding payment under this Lease. Lessee shall set aside, segregate and hold in trust all sums, if any, received by it under or pursuant to Section 6.1 of the Coal Purchase Agreement for application as required pursuant hereto and to the Indenture and the Participation Agreement. Reference to "proceeds" herein shall not be deemed to authorize any sale, assignment or other disposition by Lessee of its interest in Section 6.1 of the Coal Purchase Agreement except in compliance therewith, herewith and with the applicable provisions of the Participation Agreement.

(b) *Lessee to Keep Rights Unimpaired.* Lessee will maintain Section 6.1 of the Coal Purchase Agreement in full force and effect, will do all things necessary to keep unimpaired all of its rights, powers and remedies under such Section and to prevent any forfeiture or impairment of such Section, enforce such Section in accordance with its terms and will take all such action to that end as from time to time may be requested by Lessor or the Trustee. In the event that Lessee shall at any time receive any notice or other communication from Hydro purporting to terminate any of Hydro's obligations under Section 6.1 of the Coal Purchase Agreement or in any other way adversely affect the rights of Lessee thereunder, Lessee will immediately deliver to Lessor and the Trustee a copy of such notice or other communication.

(c) *Re-Assignment to Trustee Permitted.* Lessor and the Owner Participants, if any, may assign to the Trustee all or certain of its or their rights under this Section 13. In such event, the Trustee shall succeed to the rights of Lessor under this Section 13 so assigned as if originally named herein as assignee, and may enforce in accordance with the Indenture, for the pro rata benefit of the holders of Notes at the time outstanding, any and all terms of this Section 13 so assigned.

14. RENT. (a) *Interim Rent.* Commencing on the first Quarterly Payment Date after the delivery of each Interim Lease Supplement, and until the Leased Asset demised thereby shall be redemised under a Basic Lease Supplement or purchased and paid for by Lessee, whichever first occurs, Lessee hereby agrees to pay Lessor Interim Rent, in the amount provided in such Interim Lease Supplement as determined pursuant to Section 9 hereof, for each Leased Asset then demised thereby in installments to be paid prior to the close of business on each Quarterly Payment Date or on the date of expiration of the applicable Interim Lease Supplement if such date of expiration shall not be a Quarterly Payment Date, each such installment to be payable in Immediately Available Funds at the office of Lessor or at such other place as Lessor on at least three Business Days' notice to Lessee and Hydro may direct.

(b) *Basic Rent.* Commencing with the first Quarterly Payment Date after the delivery of each Basic Lease Supplement, and until the expiration thereof, Lessee hereby agrees to pay Lessor Basic Rent, in the amount provided for in such Basic Lease Supplement as determined pursuant to Section 10 hereof for each Leased Asset then demised thereby in installments to be paid prior to the close of business on each Quarterly Payment Date or on the date of expiration of the applicable Basic Lease Supplement if such date of expiration shall not be a Quarterly Payment Date, each such installment to be payable in Immediately Available Funds at the principal corporate trust office of the Trustee or at such other place as the Trustee on at least three Business Days' notice to Lessor, Lessee and Hydro may direct, *provided, however,* that the aggregate Basic Rent payable on each Quarterly Payment Date shall in no event be less than that amount necessary to make all payments of principal of, and premium, if any, and interest due and payable on the Notes on such date.

(c) *Supplemental Rent.* Lessee also agrees to pay to Lessor, or to whomsoever shall be entitled thereto, in Immediately Available Funds any and all Supplemental Rent promptly as the same shall

become due and owing, and in the event of any failure on the part of Lessee to pay any Supplemental Rent, Lessor shall have all rights, powers and remedies provided herein, or by law or equity or otherwise, for the nonpayment of Rent. Lessee will also pay to Lessor, on demand, as Supplemental Rent, interest at a rate per annum equal to $9\frac{1}{8}\%$ per annum, computed on the basis of a 360-day year of twelve 30-day months, on any part of any installment of Interim Rent or Basic Rent not paid when due for any period for which the same shall be overdue and on any Supplemental Rent not paid when due and owing for the period until the same shall be paid.

(d) *Non-Recourse.* It is understood and agreed that neither the Lessor nor any other person nor their respective successors and assigns shall for any payment of Rent required to be paid under this Lease have any right or recourse against the Lessee (or any Affiliate of the Lessee which becomes a sub-lessee under Section 38 hereof) or any assets of the Lessee (or any such Affiliate) other than the Transferred and Leased Assets and the rights of Lessee (or any such Affiliate) under the Coal Purchase Agreement which are assigned pursuant to Section 13 hereof; *provided, however*, that Lessor shall have plenary recourse to Lessee (or any such Affiliate) and its assets (or those of any such Affiliate) to the full extent of amounts payable hereunder which Lessee (or any such Affiliate) is obligated to pay or indemnify in respect only of Designated, Transferred or Leased Assets pursuant to Section 10 of the Coal Purchase Agreement (to the extent not paid by Hydro).

(e) *No Set-Off, etc.* Subject to the limitation on recourse set forth in the preceding paragraph, this Lease shall be deemed and construed to be a "net lease", and the Lessee shall pay the Rent absolutely net during the Term hereof, and Lessee's obligation to pay all Rent payable hereunder shall be absolute and unconditional and shall not be subject to any defense (other than payment) or be affected by (i) any right of set-off, counterclaim or recoupment arising out of any breach by Lessor of any obligation under this Lease or otherwise, or any indebtedness or liability at any time owing to Lessee by Lessor or, subject to the provisions of this Lease, any other person, (ii) any defect in the title, condition, design, operation, or fitness for use of, or any damage to, or loss or destruction of, any of the Designated, Transferred or Leased Assets or to the Mine or the Loading Site, or any interruption or cessation in the operation, use or possession thereof by Lessee for any reason whatsoever, (iii) unless prohibited thereby, any applicable law or any insolvency, bankruptcy, reorganization or similar proceedings by or against Lessor, Hydro, Lessee or any other person, (iv) any termination of the Coal Purchase Agreement or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing. If for any reason whatsoever this Lease shall be terminated in whole or in part by operation of law or otherwise, Lessee nonetheless agrees to pay to Lessor when and as due and in the funds and currency herein specified an amount equal to each Rent payment at the time such payment would have become due and payable in accordance with the terms hereof had this Lease not been terminated in whole or in part. Lessee hereby waives, to the extent permitted by applicable law, any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Lease except in accordance with the express terms hereof. Each payment of Rent made by Lessee to Lessor shall be final as to Lessor and Lessee. Lessee will not seek to recover all or any part of any such payment of Rent from Lessor for any reason whatsoever.

(f) *Assignment to Trustee.* It is understood and agreed that certain of the Rents and other right, title and interest of Lessor in, to and under this Lease have been assigned to the Trustee pursuant to the Indenture. Lessee consents to the assignment contained in the Indenture, and agrees, so long as such assignment shall be in effect, to pay over, or cause to be paid over, all of such Rents directly to the Trustee at its office at 111 Wall Street, New York, N. Y. 10015 or at such other place, without the Commonwealth of Pennsylvania, as the Trustee may direct by written notice to Lessee. It is understood and agreed that, so long as such assignment shall be in effect, the Trustee may, subject to the terms and conditions of such assignment (i) avail itself of all the rights and privileges of Lessor under this Lease which have been so assigned, (ii) make any demands and enforce any rights and powers hereunder which have been assigned to the Trustee with the same force and effect as though they were made and enforced by Lessor, and (iii) demand and receive all sums payable and to become payable to Lessor hereunder which have been assigned to the Trustee and apply them in accordance with such assignment.

The assignment under the Indenture shall create an absolute and unconditional obligation of Lessee and shall not be affected by any right of set-off, counterclaim, recoupment, defense (other than payment) or other right which Lessee may now or hereafter have against Lessor, the Trustee, the Noteholders or anyone else for any reason whatsoever, as more fully provided in (e) above.

(g) *Certain Fees to be Supplemental Rent.* Without limitation of any of the foregoing, Lessee will pay, as Supplemental Rent, (i) all cancellation fees due and payable under the Participation Agreement, (ii) all commitment fees due and payable under the Participation Agreement which are not paid by the Lessor when and as due and payable and (iii) all payments by the Lessor under Section 16 of the Participation Agreement.

15. **MAINTENANCE OF FACILITIES; COMPLIANCE WITH LAW.** The Lessee agrees that at all times during the Term of this Lease it will maintain, preserve and keep the Transferred and Leased Assets or cause the Transferred and Leased Assets to be maintained, preserved and kept with the appurtenances and every part and parcel thereof, in good repair, working order and condition in compliance in all material respects with (i) the Coal Mine Health and Safety Act and the Pennsylvania Bituminous Coal Act of 1961, as amended, and (ii) all other applicable laws and regulations including without limitation those governing the health and working conditions of persons employed at the Mine and the Loading Site. Lessee at its expense will from time to time make or cause to be made all necessary and proper repairs and in any event in compliance as aforesaid with any applicable requirements of any federal, state or local governmental authority having jurisdiction, except as provided in Section 16(b) hereof. All repairs shall be (x) equal in quality and class to the original work, (y) effected with diligence and in a workmanlike manner, so that as a result of their completion the Fair Market Sales Value of the Transferred and Leased Assets will not be less than their Fair Market Sales Value immediately before such repair and (z) promptly and fully paid for by Lessee. In case any Transferred or Leased Asset is at any time used or operated in violation in any material respect of any law or any rule, regulation, order or decree of any governmental authority having jurisdiction Lessee will take with reasonable dispatch appropriate steps to bring such Asset into compliance with such law, rule, regulation, order or decree in all material respects unless the validity of any claimed violation is being contested in good faith by appropriate proceedings but only so long as such proceedings do not involve any danger of the sale, forfeiture or loss of any Transferred or Leased Assets or interest therein.

16. **REPLACEMENT OF PARTS; ALTERATIONS, MODIFICATIONS AND ADDITIONS.** (a) *Replacement of Parts.* Except as otherwise provided in Section 16(b) hereof, Lessee, at its own expense, will promptly replace all Parts which may from time to time be incorporated or installed in or attached to any of the Transferred or Leased Assets and which may from time to time become worn out, lost, stolen, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use for any reason whatsoever. In addition, in the ordinary course of maintenance, service, repair, overhaul or testing, Lessee may remove any Parts, whether or not worn out, lost, stolen, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use, provided that Lessee shall replace such Parts as promptly as practicable. All replacement Parts shall be free and clear of all Encumbrances, shall be in compliance in all material respects with (A) the Coal Mine Health and Safety Act and the Pennsylvania Bituminous Coal Mine Act of 1961, as amended and (B) all other applicable laws and regulations including without limitation those governing the health and working conditions of persons employed at the Mine and the Loading Site. Such replacement Parts shall be in a good operating condition as, and shall have a value and utility at least equal to, the Parts replaced assuming such replaced Parts were in the condition and repair required to be maintained by the terms hereof.

All Parts at any time removed from any of the Transferred or Leased Assets shall remain the property of Lessor and the Owner Participants, if any, no matter where located, until such time as such Parts shall be replaced by Parts which have been incorporated or installed in or attached to such of the Transferred or Leased Assets and which meet the requirements for replacement Parts specified above. Immediately upon any replacement Part becoming incorporated or installed in or attached to any of the Transferred or Leased Assets as above provided, without further act, (i) title to the removed Part

shall thereupon vest in the Lessee or such other person as the Lessee may designate, free and clear of all rights of Lessor and the Owner Participants, if any, and (ii) title to such replacement Part shall vest in Lessor and the Owner Participants, if any, without further act and such replacement Part shall become subject to this Lease and be deemed part of such Transferred or Leased Asset, for all purposes hereof to the same extent as the Parts originally incorporated or installed in such Transferred or Leased Asset; *provided, however*, Lessee may elect to replace a Part temporarily with a replacement Part which is owned by a third party or which is otherwise subject to an Encumbrance or right of a third party and in such case title to such replacement Part shall not vest in Lessor and the Owner Participants, if any, but (x) Lessee shall be required to substitute for such temporary replacement Part the Part or a further replacement Part meeting the requirements for replacement Parts specified above and cause such temporary replacement Part to meet such requirements, as promptly as practicable, but in any event within the shorter of twelve months or the remainder of the applicable Term for any such Leased Asset, and (y) title to the removed Part shall remain in Lessor and the Owner Participants, if any, until the requirements of the preceding clause (x) shall be satisfied, at which time title to the removed Part shall vest in Lessee or such other person as shall be designated by Lessee, free and clear of all rights of Lessor and the Owner Participants, if any.

(b) *Alterations, Modifications and Additions.* Lessee, at its own expense, shall, within a reasonable time, make such alterations, modifications and additions (herein for the purpose of this Section collectively called "alterations") to the Transferred or Leased Assets as may be required from time to time pursuant to Section 15 hereof, *provided, however*, that Lessee shall not be required to make any such alterations to a Transferred or Leased Asset if Lessee determines in good faith and an Authorized Lessee Representative certifies in writing to Lessor, within 90 days after a responsible officer or employee of Lessee shall have become aware of the applicability of such requirements to such Transferred or Leased Asset, that it would be uneconomical and impracticable for Lessee to make such alterations to such Transferred or Leased Asset if such Transferred or Leased Asset were owned by Lessee free and clear of all Encumbrances. An Event of Loss shall be deemed to have occurred with respect to a Transferred or Leased Asset if and when either (i) Lessee shall have delivered to Lessor a certificate to the effect set forth above or (ii) Lessee shall have failed to make the alterations necessary to comply with the requirements referred to in this Subsection (b) within six months after a responsible officer or employee of Lessee shall have become aware of the applicability of such requirements to such Transferred or Leased Asset, unless Lessee, prior to the expiration of such six-month period, shall have undertaken and shall thereafter diligently carry forward all steps which are necessary or desirable to comply with such requirements. In addition, Lessee, at its own expense, may from time to time make such alterations to each Transferred or Leased Asset as Lessee may deem desirable in the proper conduct of its business, provided that no such alteration adversely affects Lessor's title thereto or diminishes the value or utility of such Transferred or Leased Asset below the value, utility and condition thereof immediately prior to such alteration assuming such Transferred or Leased Asset was then in the condition required to be maintained by the terms of this Lease.

(c) *Title.* Title to all Parts incorporated or installed in or attached to each Transferred or Leased Asset as the result of alterations shall, without further act, vest in Lessor and the Owner Participants, if any, in the following cases: (i) such Part is in replacement of or in substitution for, and not in addition to, any Part originally incorporated or installed in or attached to such Transferred or Leased Asset at the time title thereto is vested in Lessor and the Owner Participants, if any, or at the commencement of the Interim Term or Basic Term thereof, or any Part in replacement of, or substitution for, any such original Part, (ii) such Part is required to be incorporated or installed in or attached to such Transferred or Leased Asset pursuant to the terms of Section 15 hereof, or (iii) such Part cannot be removed from such Transferred or Leased Asset without diminishing or impairing the value or utility which such Transferred or Leased Asset would have had at such time had such alterations not occurred. In all other cases, Parts incorporated or installed in or attached to a Transferred or Leased Asset as a result of alterations shall not be deemed part of such Transferred or Leased Asset and may be removed by Lessee at any time prior to the return of such Transferred or Leased Asset to Lessor and the Owner

Participants, if any, hereunder as provided in Section 25 hereof. At Lessor's request Lessee at its expense shall remove before returning a Transferred or Leased Asset to Lessor and the Owner Participants, if any, any Part which Lessee is entitled to remove from such Transferred or Leased Asset pursuant hereto. Any Part which is not removed by Lessee shall become without further act the property of Lessor and the Owner Participants, if any, on the date that Lessee is obligated to purchase any such Transferred or Leased Asset pursuant to Section 8 or 9 of this Lease or at the end of the Term for any such Leased Asset, subject, however, to such Encumbrances as may attach thereto at such time.

(d) *Certificate as to Remodeling and Parts.* Within 120 days from the end of each calendar year, Lessee shall deliver to Lessor and the Trustee a certificate of an Authorized Lessee Representative setting forth the descriptions of any Parts which have become a part of the Transferred or Leased Assets and of any remodeling, substitutions, additions, modifications or improvements to the Transferred or Leased Assets which have been made during the calendar year preceding the filing of such certificate, if such Parts and such remodeling, substitutions, additions, modifications and improvements during the period in the aggregate cost in excess of \$1,000,000.

17. INSURANCE. (a) *Insurance Against Loss or Damage to Transferred and Leased Assets.* Lessee will, without cost to Lessor and the Owner Participants, if any, or any named insured mentioned below (except Lessee), maintain or cause to be maintained in effect with respect to each Transferred Asset prior to its demise hereunder and throughout the applicable Term for each of the Leased Assets and thereafter until the same are sold, abandoned or returned to Lessor and the Owner Participants, if any, pursuant to the terms hereof with financially sound and reputable insurers of recognized responsibility, fire and extended coverage insurance policies insuring each such Asset against loss, damage or destruction thereof covering such risks, with such reasonable deductibles and in such amounts as Lessee would, in the prudent management of its properties and if it were not a self-insurer in respect thereof, maintain or cause to be maintained with respect to similar assets owned by it and used in connection with similar mines, railroads and loading facilities; *provided, however,* that the amount of such insurance with respect to (x) each Leased Asset during the Basic Term thereof shall not at any time be less than the Stipulated Loss Value of such Leased Asset as of the next preceding Quarterly Payment Date and (y) each Leased Asset during the Interim Term and each Transferred Asset shall not at any time be less than the aggregate Lessor Payments then made or accrued in respect thereof plus interest thereon at the Minimum Commercial Lending Rate from the dates such Lessor Payments were made, in the case of Transferred Assets, to the next succeeding Quarterly Payment Date and, in the case of Leased Assets during the Interim Term, to the date Interim Rent began to accrue and all Interim Rent due up to the next succeeding Quarterly Payment Date. Any insurance policy or policies carried in accordance with this Subsection (a) shall (i) name Lessor and the Owner Participants, if any, as owner or owners of the Transferred and Leased Assets, and the Trustee (in respect of Leased Assets only, and only during the applicable Basic Terms) as additional insureds; (ii) provide that all insurance proceeds for losses of less than \$1,000,000 shall be adjusted with and payable to Lessee; (iii) provide that all insurance proceeds for losses of \$1,000,000 or more shall be adjusted with Lessor and Lessee jointly, subject, solely in the case of Leased Assets then leased under Basic Lease Supplements, to the approval of holders of 66⅔% or more in principal of the Notes at the time outstanding and shall be payable, solely in the case of Leased Assets then leased under Basic Lease Supplements, to the Trustee and shall otherwise be payable to Lessor and the Owner Participants, if any; (iv) include effective waivers by the insurer of all claims for insurance premiums against Lessor, the Trustee, the Note Purchasers, the Noteholders and the Owner Participants, if any; (v) provide that any losses shall be payable notwithstanding (A) any act of negligence of Lessee, Lessor, the Owner Participants, if any, or the Trustee, (B) the occupation or use of any Transferred or Leased Asset for purposes more hazardous than permitted by the terms of such policies, (C) any other breach or violation by Lessor, the Owner Participants, if any, Lessee or the Trustee of any warranties, declarations or conditions contained in such policies, (D) any foreclosure or other proceedings or notice of sale relating to any Transferred or Leased Assets or this Lease, or

(E) any change in the title to or ownership of any Transferred or Leased Assets; and (vi) provide that no cancellation thereof shall be effective until at least 30 days after receipt by the Trustee, the Lessor and the Owner Participants, if any, of written notice thereof. As between Lessor, the Owner Participants, if any, and Lessee it is agreed that all insurance proceeds received as the result of the occurrence of an Event of Loss with respect to a Transferred or Leased Asset will be applied as provided in Section 33(c) hereof and the proceeds of any insurance for loss or damage not constituting an Event of Loss with respect to a Transferred or Leased Asset will be applied as provided in Section 33(d) hereof.

(b) *Insurance Against Public Liability and Property Damage.* Lessee will, without cost to Lessor and the Owner Participants, if any, or any other named insured mentioned below (except Lessee), maintain or cause to be maintained in effect with respect to each Transferred Asset prior to its demise hereunder and throughout the applicable Term for each of the Leased Assets and thereafter until the same are sold, abandoned or returned to Lessor and the Owner Participants, if any, pursuant to the terms hereof with financially sound and reputable insurers of recognized responsibility, insurance policies with respect to such Assets insuring against loss or damage to the person and property of others from such risks with such reasonable deductibles and in such amounts as Lessee would, in the prudent management of its properties and if it were not a self-insurer in respect thereof, maintain or cause to be maintained with respect to similar assets owned by it and used in connection with similar mines, railroads and loading facilities. Any insurance policies maintained in accordance with this Subsection (b) shall name Lessor and the Owner Participants, if any, as owners of such Transferred and Leased Assets, and the Trustee (with respect to Leased Assets only and only during the applicable Basic Terms) as additional insureds. Each such policy shall also (i) include effective waivers by the insurer of all claims for insurance premiums against Lessor, the Owner Participants, if any, the Noteholders and the Trustee; (ii) provide that any losses shall be payable notwithstanding (A) any act or negligence of Lessee, Lessor, the Owner Participants, if any, or the Trustee, (B) the occupation or use of any Transferred or Leased Asset for purposes more hazardous than permitted by the terms of such policies, (C) any other breach or violation by Lessor, the Owner Participants, if any, Lessee or the Trustee of any warranties, declarations or conditions contained in such policies, (D) any foreclosure or other proceedings or notice of sale relating to any Transferred or Leased Assets or this Lease, or (E) any change in the title to or ownership of any Transferred or Leased Assets; and (iii) provide that no cancellation thereof shall be effective until at least 30 days after receipt by the Trustee, Lessor and the Owner Participants, if any, of written notice thereof. Each such insurance policy shall expressly provide that all of the provisions thereof, except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of Lessee), shall operate in the same manner as if there were a separate policy covering each insured and shall be primary without right of contribution from any insurance carried by Lessor and the Owner Participants, if any, or the Trustee on such Designated, Transferred or Leased Asset.

(c) *Workmen's Compensation.* Lessee during the Term shall either self-insure with respect to workmen's compensation and occupational disease liabilities or maintain adequate workmen's compensation and occupational disease liability coverage or cause the same to be maintained. Lessee agrees to observe prudent self-insurance principles at all times that workmen's compensation and occupational disease liability coverage is self-insured by it.

(d) *Delivery of Policies.* Lessee will deliver to the Trustee, promptly upon request of the Trustee, any Noteholder or the Lessor, the originals of all insurance policies with respect to the Transferred and Leased Assets which Lessee is required to maintain or cause to be maintained pursuant to this Section, together with evidence as to payment of all premiums then due thereon.

(e) *Reports.* In the case of each of the Transferred and Leased Assets, within 120 days after the end of each calendar year, Lessee shall furnish to Lessor and the Trustee a certificate of an Authorized Lessee Representative showing the insurance then maintained by Lessee pursuant to this Section 17 and stating that in the opinion of said person such insurance complies with the terms hereof. Lessee will cause the insurers with whom it maintains any insurance to advise Lessor in writing promptly

of any default in the payment of any premiums or any other act or omission on the part of Lessee of which they have knowledge and which might invalidate or render unenforceable, in whole or in part, any such insurance. Lessee will also cause such insurers to advise Lessor and the Trustee in writing, at least ten days prior thereto, of the expiration or termination of any such insurance. In the event that Lessee shall fail to maintain insurance as herein provided Lessor may at its option maintain such insurance and, in such event, Lessee shall reimburse Lessor upon demand for the cost thereof as Supplemental Rent.

18. **NO WARRANTIES BY LESSOR AND OWNER PARTICIPANTS.** The selection of the Vendors and the design, engineering, installation and other services relating to the Mine, the Loading Site and the Designated, Transferred and Leased Assets are and are to be exclusively in the province of the Lessee. **THE LESSOR AND THE OWNER PARTICIPANTS, IF ANY, MAKE AND SHALL BE DEEMED TO HAVE MADE NO REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE TITLE, VALUE, CONDITION, ACTUAL OR DESIGNED CAPACITY, OPERATION, MERCHANTABILITY, OR FITNESS FOR ANY USE OF THE DESIGNATED, TRANSFERRED OR LEASED ASSETS, AS TO INFRINGEMENT OF ANY PATENTS, AS TO THE SUITABILITY OR OPERATION OF THE DESIGNATED, TRANSFERRED OR LEASED ASSETS FOR THE PURPOSES FOR WHICH THEY MAY AT ANY TIME BE USED OR THAT THE DESIGNATED, TRANSFERRED OR LEASED ASSETS WILL BE SUITABLE FOR THE LESSEE'S PURPOSES OR NEEDS, AS TO COMPLIANCE IN ANY RESPECT WITH THE COAL MINE HEALTH AND SAFETY ACT AND THE PENNSYLVANIA BITUMINOUS COAL MINE ACT OF 1961, AS AMENDED, OR REGULATIONS ESTABLISHED BY THE DEPARTMENT OF INTERIOR, THE U. S. BUREAU OF MINES OR APPROPRIATE PENNSYLVANIA AUTHORITIES, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE DESIGNATED, TRANSFERRED OR LEASED ASSETS** except that Lessor and each Owner Participant, if any, warrant that the Transferred and Leased Assets shall be free of Encumbrances resulting from any acts of or claims against it (other than Encumbrances, if any, which Lessee is required to discharge hereunder).

19. **LOCUS OF TRANSFERRED AND LEASED ASSETS; RELOCATION; RIGHT OF INSPECTION.** Unless Lessee shall have obtained the prior written consent of the Lessor and the Trustee to the movement thereof to another location, except in the case of a delivery or relinquishment of possession for purposes of warranty, replacement or repair, the Transferred and Leased Assets may be situated only in Greene County, Pennsylvania in the general area of the Mine and the Loading Site (a) on sites owned in fee by Lessee or (b) at other locations in such state, county and general area if and only if (i) Lessee has full rights of entry to and possession of such locations, (ii) such Assets will at such locations be subject to no Encumbrances and (iii) (without limitation of the foregoing) no owners, mortgagees, lessors or other persons having any interest in such locations have any right or basis to support any claim that any of such Transferred or Leased Assets there situated shall be or become accessions to the interest of any such owner, mortgagee, lessor or other person in such location. At all reasonable times, upon reasonable notice, subject to all safety and operating regulations of Lessee, Lessor, each Owner Participant, if any, the Trustee or any Noteholder which (x) is a financial institution and (y) holds at least ten percent in aggregate unpaid principal amount of Notes then outstanding, or any of their authorized representatives, may inspect the Mine, the Loading Site and the Transferred and Leased Assets and the books and records of Lessee relative thereto at Lessee's expense, and, at such times as may be reasonably requested, Lessee will furnish Lessor, the Owner Participants, if any, the Trustee or any such Noteholder at Lessee's expense with accurate statements regarding the condition and state of repair of the Mine, the Loading Site and the Transferred and Leased Assets. In the event any permission to relocate is granted pursuant to the provisions of this Section, Lessee may relocate any of the Transferred and Leased Assets only at a site at which Lessee shall at all times have the right, under the terms of the arrangement under which such Transferred and Leased Assets shall be kept at such relocated site, to afford to Lessor, the Owner Participants, if any, the Trustee or any such Noteholder or any of their authorized representatives their

rights of inspection and entry for all purposes provided for hereunder. Neither Lessor nor any Owner Participant, nor any Noteholder nor the Trustee shall have any duty to make any such inspection or inquiry nor shall it incur any liability or obligation by reason of not making any such inspection or inquiry.

20. **RETENTIONS AND POST-PURCHASE PAYMENTS TO VENDORS.** (a) *Retentions.* If any portion of any Lessor Payment has been retained by Lessor pending further performance by a Vendor or for any other reason as specified in any certificate delivered by Lessee pursuant to Section 8(d)(i) hereof, then Lessor shall disburse the funds so retained to or upon the order of Lessee against receipt by Lessor from Lessee of a certificate of an Authorized Lessee Representative to the effect that the purpose for which such portion was retained has been accomplished to the satisfaction of Lessee. Such disbursements shall be made by Lessor promptly after receipt of such certificates without regard to whether the date of such disbursements is a Quarterly Transfer Date.

(b) *Post-Purchase Payments to Vendors.* The Lessee hereby agrees for the benefit of the Lessor and the Owner Participants, if any, that it will promptly pay or cause to be paid (without reimbursement by Lessor and the Owner Participants, if any) to any Vendor any amount (whether or not in excess of the Lessor's Cost of the affected Transferred or Leased Asset) payable to such Vendor after payment by Lessor and the Owner Participants, if any, of all Service Payments, Pre-Purchase Advances and Purchase Prices required to be paid by Lessor or such Owner Participants hereunder for any Transferred or Leased Asset; *provided, however,* that no such payment shall be required if the applicability or amount thereof is being contested in good faith and by appropriate proceedings, but only so long as such proceedings do not involve any danger of the sale, forfeiture, repossession or loss of any Transferred or Leased Asset or interest therein; and *provided, further, however,* that no such payment or any other amount paid or credited to any Vendor by the Lessee shall give the Lessee any interest in the Transferred or Leased Assets other than its interest as Lessee under the Lease or any right for the repayment thereof or reimbursement therefor from Lessor and the Owner Participants, if any.

21. **TRANSFERRED AND LEASED ASSETS TO BE PERSONAL PROPERTY.** Lessee agrees that it will not permit any Transferred or Leased Asset to be other than a special-purpose structure readily capable of being dismantled, transported and re-used without material injury thereto or to the underlying real property or to be installed in or attached to any building or located above, upon or under any real property in such manner as to become part of such building or real property so as to preclude the removal thereof without material injury to such Transferred or Leased Asset or to such building or real property, it being the intention and agreement of the parties that each Transferred and Leased Asset shall be and remain personal property (except as may otherwise be provided under applicable law for purposes of state and local taxation and the exercise of the power of eminent domain) owned by the Lessor and the Owner Participants, if any, and removable by Lessor pursuant hereto throughout the Term and thereafter unless otherwise agreed in writing.

22. **LESSEE TO PAY CERTAIN EXPENSES.** Whether or not the transactions contemplated hereby or by any of the other instruments referred to herein are consummated, Lessee will pay as Supplemental Rent an amount which will equal all fees and expenses of the Lessor, the Owner Participants, if any, the Trustee and the Note Purchasers in connection with the preparation, execution, delivery, modification, administration and enforcement of this Lease, the Owner Participants' Agreement, the Participation Agreement, the Coal Purchase Agreement, the Hydro Consent and Agreement, the Notes and the Indenture, including, without limitation, fees and disbursements of Salomon Brothers, and all other advisors, brokers and finders connected with the placement of the Notes, Uniform Commercial Code and other filing fees, recording costs, printing costs and reasonable fees and disbursements of (a) Debevoise, Plimpton, Lyons & Gates and Borden & Elliot and Reed Smith Shaw & McClay and other special counsel for the Note Purchasers and the Noteholders, (b) Kirkpatrick, Lockhart, Johnson & Hutchison and Sullivan & Cromwell and Squire, Sanders & Dempsey and other counsel for Hydro, (c) Davis Polk & Wardwell and Blake, Cassels & Graydon and other special counsel for the Lessor and (d) Shear-

man & Sterling, counsel for the Trustee; *provided, however*, that Lessee shall not be required to pay the fees and disbursements of any counsel for any Noteholder other than the special counsel for all the Note Purchasers and the Noteholders referred to above.

23. ASSETS OBSOLETE OR SURPLUS TO NEEDS OF LESSEE. (a) *Declarations of Surplus or Obsolescence.* So long as no Event of Default or other event or condition which with notice or lapse of time or both would constitute an Event of Default shall have occurred and be continuing, Lessee shall have the right at its option (a) to determine that any Designated Asset shall no longer be such if an Authorized Lessee Representative advises Lessor of such determination in writing or (b) to terminate the possession of any of the Transferred Assets or to terminate the leasing hereunder of any Leased Assets leased under Interim Lease Supplements if an Authorized Lessee Representative advises Lessor of such termination in writing or (c) to terminate the leasing hereunder of any of the Leased Assets leased under Basic Lease Supplements, if in the good faith opinion of the Board of Directors of Lessee or the Executive Committee thereof, acting in reliance upon a certificate of a duly licensed professional engineer (who may be an employee of Lessee) such Leased Asset or Assets shall have become obsolete or shall be surplus to Lessee's requirements at the Mine or the Loading Site and an Authorized Lessee Representative advises Lessor of such termination in writing; *provided, however*, that Sections 31 and 32 hereof and not this Section 23 shall be applicable in the event of any termination of the Coal Purchase Agreement.

(b) *Surplus or Obsolescence of Designated or Transferred Assets or Leased Assets Leased Under Interim Lease Supplements.* If and to the extent that any such determination or termination relates to a Designated Asset in respect of which Pre-Purchase Advances or Service Payments have been made or accrued or a Transferred Asset or a Leased Asset leased under an Interim Lease Supplement then Lessee, at its option and sole expense, shall within 30 Business Days of the date of the written advice referred to in (a) or (b) above either (i) (with Lessor's prior written consent) at Lessee's sole expense without adversely affecting the tax position of Lessor and the Owner Participants, if any, substitute assets otherwise useful in connection with the Mine or Loading Site (and vest Lessor and the Owner Participants, if any, with title thereto) if Lessor and the Owner Participants, if any, shall be entitled to substantially the same after-tax benefits of investment tax credit and depreciation and interest deductions as Lessor and the Owner Participants, if any, had with respect to the Asset being replaced or (ii) repurchase the interest, if any, of Lessor and the Owner Participants, if any, in the Asset as to which the determination or termination shall have been made and repay to Lessor in Immediately Available Funds with respect to such Asset all Lessor Payments then or theretofore made or accrued in respect thereof plus interest thereon (to the extent not otherwise then or previously recouped by Lessor) at the Minimum Commercial Lending Rate from the date or dates such Payments were made to, in the case of Designated and Transferred Assets, the date of such payment, or, in the case of Leased Assets leased under Interim Lease Supplements, to the date Interim Rent began to accrue and plus, in the case of Leased Assets leased under Interim Lease Supplements, all accrued but unpaid Interim Rent up to and including the date of such payment. Lessor will transfer title to the interest of Lessor and the Owner Participants, if any, to Assets so repurchased by Lessee in the manner specified in Section 41(c) hereof.

(c) *Surplus or Obsolescence of Leased Assets Leased Under Basic Lease Supplements.* If a determination shall be made pursuant to Section 23(a) hereof that any Leased Asset leased under a Basic Lease Supplement is surplus or obsolete, Lessee shall be obligated to replace such Asset, subject to the exceptions provided for in, and in the manner and within the time required by, and in full compliance with, Section 29 hereof. If at any time as provided in Section 29(a) hereof Lessee becomes obligated to make sales and payments required by this Section 23(c) and by Section 33(b) hereof and Lessee elects to make sales and payments under this Section 23(c) with respect to Leased Assets so declared to be obsolete or surplus, then Lessee shall within 60 days of the 30th consecutive day referred to in Section 29(a) hereof deliver to Lessor and the Trustee a certificate of an Authorized Lessee Representative certifying the attached resolutions of the Board of Directors or Executive Committee evidencing the action referred to in Section 23(a) above, identifying the Leased Asset or Assets so declared to be obsolete or surplus

with respect to which such election is applicable and stating that Lessee, on a Business Day specified in such certificate not less than 30 days after the delivery of such certificate and within 90 days of the 30th consecutive day referred to in Section 29 hereof, either will (i) purchase such Assets for its own account or the account of one or more of its Affiliates or (ii) effect the sale of the same to a third party or (iii) effect any combination of such actions; *provided, however*, that if and when the aggregate Lessor's Cost of such Assets so declared to be obsolete or surplus and purchased by Lessee or any Affiliate or Affiliates of Lessee shall equal or exceed \$4,500,000, then Lessee shall thereafter effect the sale of all such Assets thereafter so declared to be obsolete or surplus only to persons other than Lessee and its Affiliates, it being understood that such sales in such circumstances need not be effected within such 90 day period but that Lessee shall use its best efforts to effect such sales as soon as reasonably practicable. In the event that there has been or is to be such a purchase or sale within such 90 day period, then no later than the earlier of (x) the date on which Lessee receives the proceeds of any such sale or (y) the close of business on the last Business Day within such 90 day period Lessee shall pay to Lessor either (i) the total net proceeds realized or to be realized from such sale, if such total net proceeds are equal to or greater than the Optional Termination Value as of the date of such payment to Lessor of such Leased Asset or Assets so declared to be obsolete or surplus or (ii) the Optional Termination Value of such Leased Asset or Assets as of the date of such payment to Lessor if the total net proceeds of such sale are or are to be less than the Optional Termination Value of such Leased Asset or Assets as of such date. In the event that there has not been and is not to be such a purchase or sale within such 90 day period, then Lessee shall, no later than the close of business on the last Business Day within such 90 day period, pay to Lessor the Optional Termination Value of such Leased Asset or Assets as of such date of payment. Upon payment in full of such net proceeds or Optional Termination Value the obligation of Lessee to pay Basic Rent hereunder with respect to such Leased Asset so declared to be obsolete or surplus on all Quarterly Payment Dates after the date of payment of such net proceeds or Optional Termination Value shall terminate. Lessee shall at the time the declaration referred to in Section 23(a) hereof is made cease using the Assets so declared to be obsolete or surplus in the Mine or the Loading Site or otherwise, and such Assets must be stored by Lessee at its expense at a location permitted under Section 19 hereof until the same are sold or purchased. If at any time after the expiration of such 90 day period Lessee or any of its Affiliates shall sell any such Leased Asset or Assets purchased by or for Lessee or any of its Affiliates for a total net proceeds greater than the total amount so paid to Lessor, Lessee shall forthwith pay Lessor the excess of such total net proceeds over such amount. Neither Lessor nor the Owner Participants, if any, shall be under any duty to solicit offers, to inquire into the efforts of Lessee to obtain bids or otherwise take any action in connection with any such sale other than to transfer title to the purchaser certified by Lessee to Lessor (or to Lessee or any of its Affiliates, as the case may be) in the manner specified in Section 41(c) hereof.

24. **LESSEE OBLIGATED TO PERFORM CERTAIN OBLIGATIONS OF LESSOR AND OWNER PARTICIPANTS UNDER INDENTURE.** Lessee hereby agrees that it will duly and punctually perform or cause to be performed each and every obligation of Lessor and the Owner Participants, if any, under and pursuant to the Indenture other than the obligations of the Lessor under Sections 2.1, 2.11, 2.12, 2.13, 6 (insofar as it relates to books and records of the Lessor), 7, 9, 11, 16.3, 23 and 40 of the Indenture and the equivalent obligations of the Owner Participants, if any. The Lessee's obligations under this Section shall be those of a primary obligor (and not of a guarantor or surety), and Lessee hereby consents that Lessor, the Trustee and the Noteholders or any of them may proceed directly against it in respect of the performance of each such obligation, subject, however, to the limitations on recourse against Lessee set forth in Section 14(d) hereof.

25. **RETURN OF THE TRANSFERRED AND LEASED ASSETS.** (a) *Delivery.* Upon the termination of a Basic Term (unless at such time the Lessee shall have purchased the Leased Assets pursuant to Section 31 or 32 hereof) or at any time when Lessee is obligated to purchase Transferred or Leased Assets and fails to do so or at any other time when Lessor is entitled to possession of Transferred and Leased

Assets, Lessee, at its expense, will return each and every Transferred and Leased Asset to which Lessor and the Owner Participants, if any, are entitled to possession by delivering the same to a common carrier selected by Lessor (dismantled and crated or otherwise rendered suitable for shipping at Lessee's expense) for delivery at the expense of Lessor and the Owner Participants, if any, to any location chosen by Lessor within a reasonable time (not to exceed 60 days) after delivery to Lessee of written instructions to such effect. At the time of such delivery to such common carrier each Transferred and Leased Asset shall be free and clear of all Encumbrances (except such as may have arisen from the acts of Lessor and the Owner Participants, if any) and shall be readily capable of being reassembled and used in as good operating condition as when delivered to Lessee hereunder, ordinary wear and tear excepted. The risk of loss or damage to any Transferred or Leased Asset after (but not before) delivery to a carrier as between Lessee and Lessor and the Owner Participants, if any, shall be borne by Lessor and the Owner Participants, if any.

(b) *Storage.* Upon written request of Lessor at any time when Lessor and the Owner Participants, if any, are entitled to delivery pursuant to Section 25(a) hereof, Lessee will provide Lessor and the Owner Participants, if any, with free storage facilities for the affected Transferred or Leased Assets for a period not exceeding 180 days at such location in the United States as Lessee may select. Lessee will transport such Transferred or Leased Assets within such 180-day period from such place of storage selected by Lessee via a common carrier selected by Lessor (dismantled and crated or otherwise rendered suitable for shipping at Lessee's expense) for delivery, at the expense of the Lessor and the Owner Participants, if any, to any location chosen by Lessor on 40 days' notice of such delivery location given to the Lessee by the Lessor. Lessor, at the expense of Lessor and the Owner Participants, if any, may place such insurance on the Transferred and Leased Assets as it may deem appropriate.

(c) *Abandonment.* In lieu of delivery or storage of the affected Transferred or Leased Assets as provided by Section 25(a) or 25(b) hereof, Lessor may, in its sole discretion, elect to abandon such Transferred or Leased Assets by delivering written notice to such effect to Lessee. In addition, if Lessor, after receiving written notice from Lessee requesting any notification, request or designation referred to in this sentence as to any Transferred Asset or Leased Asset which is not subject to the security interest of the Indenture shall fail to notify Lessee of a delivery location pursuant to Section 25(a) hereof, or request storage under Section 25(b) hereof, or to designate a delivery point prior to the conclusion of the storage period then in each such event Lessor shall be deemed to have abandoned such Transferred or Leased Asset. In such event, Lessor shall, at Lessee's request transfer all of the right, title and interest of Lessor and the Owner Participants, if any, therein in the manner provided in Section 41(c) hereof. After any such transfer is effected, Lessee shall indemnify, defend and hold the Lessor and the Owner Participants, if any, harmless from any and all liability thereafter arising from ownership thereof. Lessor and the Owner Participants, if any, and Lessee shall cooperate in taking such action as may be necessary, in the judgment of Lessor, to effectuate this subsection (c) and to transfer such Transferred or Leased Assets to Lessee.

(d) *Manuals.* Concurrently with the delivery of any Transferred or Leased Asset pursuant to this Section 25 Lessee shall deliver to the Lessor copies of all plans, specifications, operating manuals, inspection, modification and overhaul records and other documents then in its possession relating to the construction, maintenance, operation and servicing of such Transferred or Leased Asset.

26. **ENCUMBRANCES.** Lessee will not during the Term hereof directly or indirectly create, incur, assume or suffer to exist either (a) any Encumbrance on or with respect to any real property of Lessee above, upon or under which any of the Transferred or Leased Assets may be situate (except for (i) minor Encumbrances such as, without limitation, utility easements and covenants which do not in the aggregate involve the danger of sale, forfeiture or loss of any of such real property or materially and adversely affect the use for purposes of operating the Mine or the Loading Site or (ii) Encumbrances on surface rights above the Coal Properties which surface rights are not owned by Lessee) or (b) any Encumbrances on or with respect to all or any of the Transferred or Leased Assets, title thereto or any interest

therein. Lessee will promptly at its own expense take such action as may be necessary duly to discharge or eliminate or bond in a manner satisfactory to Lessor and the Trustee any of the foregoing prohibited Encumbrances if the same shall arise at any time *provided, however*, that the filing of a mechanics' lien by a claimant as such term is defined in Mechanics' Lien Law of 1963 of Pennsylvania, P.L. 1175, No. 497 of 1963 (49 C.P.S.A. § 1101, et seq.), as the same may be re-enacted in whole or in part as otherwise amended from time to time, shall not, for so long as such claimant has no right to enforce such lien, be deemed to be an Encumbrance for purposes solely of compliance with this Section 26 if Lessee, within 60 days after the filing of any such mechanics' lien, causes the same to be discharged of record by bond, by paying the amount claimed to be due by deposit in court or otherwise.

27. **EVENTS OF DEFAULT.** Each of the following events shall constitute Events of Default (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) :

(a) *Non-Payment of Rent.* Lessee shall fail to make any payment of Interim or Basic Rent within ten days of the date on which such payment is due, or Lessee shall fail to make any payment of Supplemental Rent within ten Business Days after the date such payment shall be due.

(b) *Encumbering or Subletting.* The Encumbering or subletting by the Lessee of the Transferred or Leased Assets, this Lease or its leasehold interest, except as permitted by this Lease.

(c) *Failure to Maintain Insurance.* Lessee shall fail to maintain insurance on the Transferred and Leased Assets as required hereby, and such failure shall continue unremedied for a period of 30 days.

(d) *Failure to Observe Covenants After Notice.* Lessee shall fail to perform or observe any covenant, condition or agreement to be performed or observed by it hereunder (other than those specified in the preceding Subsections (a), (b) and (c)) and such failure shall continue unremedied for a period of 30 days after written notice thereof by Lessor.

(e) *Incorrectness of Representations and Warranties.* Any representation or warranty made by Lessee or Hydro in this Lease or in the Participation Agreement or in any document or certificate furnished to Lessor, the Trustee or any Note Purchaser in connection herewith or therewith shall be incorrect when made in any material respect.

(f) *Consent to Appointments; Assignment for Benefit of Creditors.* Lessee or Hydro shall consent to the appointment of a receiver, trustee or liquidator of itself or of a substantial part of its property, or Lessee or Hydro shall admit in writing its inability to pay its debts generally as they come due, or shall make a general assignment for the benefit of creditors.

(g) *Voluntary Bankruptcy and Other Proceedings.* Lessee or Hydro shall file a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any bankruptcy laws (as now or hereafter in effect) or an answer admitting the material allegations of a petition filed against Lessee or Hydro in any such proceeding, or Lessee or Hydro shall by voluntary petition, answer or consent seek relief under the provisions of any other now existing or future bankruptcy or other similar law providing for the reorganization or winding-up of corporations, or providing for an agreement, composition, extension or adjustment with its creditors.

(h) *Appointment of Receiver, Trustee or Liquidator; Sequestration.* An order, judgment or decree shall be entered in any proceedings by any court of competent jurisdiction appointing, without the consent of Lessee or Hydro, a receiver, trustee or liquidator of Lessee or Hydro or of any substantial part of the property of either or sequestering any substantial part of the property of Lessee or Hydro and any such order, judgment or decree of appointment or sequestration shall remain in force undismissed, unstayed or unvacated for a period of 90 days after the date of entry thereof.

(i) *Involuntary Bankruptcy and Other Proceedings.* A petition against Lessee in a proceeding under the applicable bankruptcy laws or other insolvency laws or against Hydro under comparable laws of Ontario or Canada or both as now or hereafter in effect shall be filed and shall not be withdrawn or dismissed within 90 days thereafter, or if, under the provisions of any law providing for reorganization or winding-up of corporations which may apply to Lessee or Hydro, any court of competent jurisdiction shall assume jurisdiction, custody or control of Lessee or Hydro or of any substantial part of either of their properties and such jurisdiction, custody or control shall remain in force unrelinquished, unstayed or unterminated for a period of 90 days.

(j) *Impermissible Amendment of Coal Purchase Agreement.* Any provision of the Coal Purchase Agreement which cannot by the terms thereof or by the terms of the Participation Agreement be waived, amended, modified or terminated without the written consent of Lessor, the Trustee and the Noteholders shall have been waived, amended, modified or terminated without such written consent.

Lessee covenants that if a petition in bankruptcy or reorganization or for similar relief shall be filed by Lessee or Hydro or if the Lessee or Hydro shall be adjudged bankrupt or insolvent by any court, or if a receiver, liquidator or trustee in bankruptcy or reorganization of Lessee or Hydro or of any substantial part of the property of either shall be appointed in any suit or proceeding brought by or against the Lessee or Hydro, then in each and every such case, the Term hereby granted shall, at Lessor's option, cease, determine and come to an end, and the Lessor and the Owner Participants, if any, may recover and resume possession of the Transferred and Leased Assets by any legal means.

Any provisions of the foregoing Subsections (f), (g), (h) and (i) or the foregoing paragraph to the contrary notwithstanding, no event or condition relating to Lessee referred to in any such Subsection or such paragraph shall constitute an Event of Default if, within 90 days after the first occurrence thereof, (x) each Event of Default other than those referred to in such Subsections and each other event or condition which with notice or lapse of time or both would become an Event of Default shall have been fully cured or waived and (y) Hydro shall have duly, validly and irrevocably assumed (without limitation on recourse against Hydro) by written instrument in form and substance satisfactory to Lessor, the Trustee and each Noteholder, and counsel for each, each and every obligation of Lessee hereunder, and Lessor, the Trustee and each Noteholder shall have received such opinions of its counsel and counsel for Hydro with respect to the validity of such affirmation and assumption as they may reasonably request.

28. REMEDIES. Upon the occurrence of any Event of Default or at any time thereafter so long as the same shall be continuing, Lessor may, at its option, declare this Lease to be in default; and at any time thereafter, so long as Lessee shall not have remedied all outstanding Events of Default, Lessor may do one or more of the following with respect to all or any part of the Designated Assets in respect of which Lessor Payments have been made or accrued or Transferred or Leased Assets as Lessor in its sole discretion shall elect, to the extent permitted by, and subject to compliance with any mandatory requirements of, applicable law then in effect:

(a) *Return.* Cause Lessee, upon the written demand of Lessor and at Lessee's sole expense, to return promptly or store for return, and Lessee shall return promptly or store for return, all or such part of the Transferred and Leased Assets as Lessor may so demand in the manner and condition required by, and otherwise in accordance with all the provisions of, Section 25 hereof as if the Transferred and Leased Assets were being returned at the end of the applicable Term, or Lessor, at its option, may, without notice or opportunity for hearing, enter upon the Mine or the Loading Site or other premises at which the Transferred and Leased Assets are then located and take immediate possession of and remove the same by summary proceedings or otherwise (notice of which Lessee hereby irrevocably waives) all without liability accruing to Lessee or Hydro for or by reason of such entry or taking of possession, whether for the remedying of damage to property caused by such taking or otherwise.

(b) *Sale.* Whether or not Lessor shall have exercised, or shall thereafter at any time exercise, any of the rights under paragraph (a) above, Lessor may sell or cause to be sold all or any part of the Transferred and Leased Assets at public or private sale, as Lessor may determine, or otherwise dispose of, hold, use, operate, lease to others or keep idle all or any part of the Transferred and Leased Assets as Lessor, in its sole discretion, may determine, all free and clear of any rights of Lessee, Hydro or others except as hereinafter set forth in this Section 28 and without any duty to account to Lessee, Hydro or others with respect to such action or inaction or for any proceeds with respect thereto.

(c) *Certain Liquidated Damages.* Whether or not Lessor shall have exercised, or shall thereafter at any time exercise, any of its rights under paragraph (a) or paragraph (b) with respect to all or any part of the Transferred or Leased Assets, Lessor, by written notice to Lessee specifying a payment date which shall be a date not earlier than ten days from the date of such notice, may demand that Lessee pay to Lessor, and Lessee shall pay Lessor, on the payment date specified in such notice, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Interim and Basic Rent due after the date specified for payment in such notice), any unpaid or accrued Interim and Basic Rent due on or prior to the payment date specified in such notice plus whichever of the following amounts Lessor, in its sole discretion, shall specify in such notice together with interest on such amount from the most recent Quarterly Payment Date on which all payments then required hereunder were paid at the rate of 9 $\frac{1}{8}$ % per annum:

(i) an amount equal (after deducting the net proceeds actually received from or in respect of any sales previously made pursuant to Section 28(b) above) to the excess, if any, of (A) the sum of (1) amounts payable in the absence of substitution of assets pursuant to Section 33(a) if an Event of Loss had occurred with respect to such Designated Assets and Transferred Assets and Leased Assets then leased under Interim Lease Supplements, if any, plus (2) the Adjusted Termination Value of Leased Assets then leased under Basic Lease Supplements, if any, computed as of the payment date specified in such notice, over (B) the aggregate Fair Market Rental Value of (1) the Transferred Assets for what would have been the Basic Term thereof if the same had become Leased Assets on April 3, 1979 and (2) the Leased Assets for the remainder of the applicable Term, after discounting such aggregate Fair Market Rental Value quarter-annually to present worth as of the payment date specified in such notice at the rate of 8 $\frac{1}{8}$ % per annum; *provided, however*, that only amounts, Values and proceeds relating to Leased Assets leased under Basic Lease Supplements shall be included in the computation under this clause (i) if the effect of the inclusion of amounts, Values and proceeds relating to Assets other than Leased Assets leased under Basic Lease Supplements would be to reduce the amount determined under this clause (i).

(ii) an amount equal (after deducting the net proceeds actually received from or in respect of any sales previously made pursuant to Section 28(b) above) to the excess, if any, of (A) the sum of (1) amounts payable in the absence of substitution of assets pursuant to Section 33(a) hereof if an Event of Loss had occurred with respect to such Designated Assets and Transferred Assets and Leased Assets then leased under Interim Lease Supplements, if any, plus (2) the Stipulated Loss Value of Leased Assets then leased under Basic Lease Supplements, if any, computed as of the payment date specified for payment in such notice over (B) the aggregate Fair Market Sales Value of the Transferred and Leased Assets as of the Quarterly Payment Date immediately prior to the payment date specified in such notice, *provided however*, that only amounts, Values and proceeds relating to Leased Assets leased under Basic Lease Supplements shall be included in the computation under this clause (ii) if the effect of the inclusion of amounts, Values and proceeds relating to Assets other than Leased Assets leased under Basic Lease Supplements would be to reduce the amount determined under this clause (ii).

(d) *Certain Other Liquidated Damages.* In the event Lessor, pursuant to paragraph (b) above, shall sell or have sold any Transferred or Leased Asset, Lessor, in lieu of exercising its rights under

paragraph (c) above with respect to such Transferred or Leased Asset, may, if it shall so elect, demand that Lessee pay to Lessor, and Lessee shall pay to Lessor in Immediately Available Funds on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Rent with respect to such Asset due for dates after the dates in which such sale occurs), (x) any accrued or unpaid Interim or Basic Rent, as the case may be, with respect to such Asset due for dates up to and including the dates on which such sale occurs plus (y) the amount of any deficiency between the net proceeds of such sale and, in the case of any such Transferred Asset or Leased Asset then leased under an Interim Lease Supplement, the sum of amounts payable in the absence of substitution of assets pursuant to Section 33(a) hereof if an Event of Loss had occurred with respect to such Asset or, in the case of any Leased Asset then leased under a Basic Lease Supplement, the Stipulated Loss Value thereof computed as of the date of such sale, together with interest, if any, at the rate of $9\frac{1}{8}\%$ per annum on the amount of such deficiency from the date as of which such value is computed until the date of actual payment plus (z) the full amount of any other Lessor Payments with respect to such Asset not otherwise recouped.

(e) *All Other Remedies Permitted.* Lessor may rescind this Lease or any Interim or Basic Lease Supplements or may exercise any other right or remedy which may be available to it under applicable law (including the removal of Parts so as to render the Transferred and Leased Assets inoperable) or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof.

In addition, Lessee shall be liable for any and all accrued and unpaid Rent due hereunder before, after or during the exercise of any of the foregoing remedies and for all legal fees and other costs and expenses incurred by Lessor, the Owner Participants, if any, or the Trustee by reason of the occurrence of any Event of Default or the exercise of remedies with respect thereto, including all costs and expenses incurred in connection with settlements with Vendors, if any, the return of the Transferred and Leased Assets in accordance with the terms of Section 25 hereof or in placing the Transferred and Leased Assets in the condition required by such Section. At any sale of the Transferred and Leased Assets or part thereof pursuant to this Section 28, Lessor (or the Trustee) may bid for and purchase such Transferred and Leased Assets. Except as otherwise expressly provided above, no remedy referred to in this Section 28 is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Lessor at law or in equity, and the exercise or beginning of exercise by Lessor of any one or more of such remedies shall not preclude the simultaneous or later exercise by Lessor of any or all of such other remedies. No express or implied waiver by Lessor of any Event of Default or event or condition which, with notice or lapse of time or both, would become an Event of Default shall in any way be, or be construed to be, a waiver of any future or subsequent Event of Default or event or condition which, with notice or lapse of time or both would become an Event of Default. To the extent permitted by applicable law, Lessee hereby waives any rights now or hereafter conferred by statute or otherwise which may require Lessor to sell, lease or otherwise use the Transferred and Leased Assets or any part thereof in mitigation of Lessor's damages as set forth in this Section 28 or which may otherwise limit or modify any of Lessor's rights or remedies under this Section 28 or existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Lessor or the Trustee to exercise any remedy reserved to it in this Section 28, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

Anything in this Section 28 to the contrary notwithstanding, Lessor may at any time commence and prosecute any legal or other proceedings to compel the payment of or to collect any Rent which is due and payable hereunder or resort to any other remedies for the non-payment of such Rent whether or not at the time of commencement or during the pendency of such proceedings or exercise of remedies there has occurred any Event of Default or other event or condition which with notice or lapse of time or both would become an Event of Default.

29. REPLACEMENT OF CERTAIN ASSETS DECLARED SURPLUS OR OBSOLETE OR SUFFERING AN EVENT OF LOSS. (a) *Replacement.* Lessee, at its expense, will replace each Leased Asset which, during a Basic Term, is declared surplus or obsolete pursuant to Section 23(a) hereof or with respect to which, during a Basic Term, an Event of Loss is suffered, each such replacement to be made promptly after such declaration or occurrence of an Event of Loss, but not more than twelve months thereafter; *provided, however*, that if the aggregate Lessor's Cost of all Leased Assets required to be replaced pursuant to this Section but (i) which have not yet been actually replaced and (ii) (in the case only of Assets which have suffered an Event of Loss) with respect to which (A) insurance proceeds equal to or greater than the Stipulated Loss Value are not on deposit with the Trustee and (B) no other security is held by the Trustee as shall have been approved in writing by the Lessor and the Trustee with the written consent of holders of 66 $\frac{2}{3}$ % or more in principal amount of the Notes then outstanding shall equal or exceed \$1,000,000 for a period of 30 consecutive days then Lessee shall no longer have a duty to replace such Assets to the extent such aggregate Lessor's Cost exceeds \$1,000,000, and Lessee shall timely make the sales and payments required by Sections 23(c) and 33(b) hereof in any combinations elected by Lessee so that, after effecting the same, such aggregate Lessor's Cost shall be reduced to an amount less than \$1,000,000.

All such replacement Leased Assets shall be free and clear of all Encumbrances, shall be in compliance in all material respects with (A) the Coal Mine Health and Safety Act and the Pennsylvania Bituminous Coal Mine Act of 1961, as amended, and (B) all other applicable laws and regulations including without limitation those governing the health and working conditions of persons employed at the Mine and the Loading Site. Each replacement Leased Asset shall be in as good operating condition as, and shall have a value and utility at least equal to, the Leased Asset replaced assuming such replaced Leased Asset was in the condition and repair required to be maintained by the terms hereof.

Each such replaced Leased Asset at any time the use of which has been discontinued or which has been removed from the Mine or the Loading Site shall remain the property of Lessor and the Owner Participants, if any, no matter where located, until such time as such Leased Asset shall be replaced by a like or comparable Leased Asset which meets the requirements for a replacement Leased Asset specified above. Immediately upon any replacement Leased Asset being put into service at the Mine or the Loading Site without further act (i) title to the replaced Leased Asset shall thereupon vest in the Lessee or such other person as the Lessee may designate, free and clear of all rights of Lessor and the Owner Participants, if any, (ii) title to such replacement Leased Asset shall thereupon vest in Lessor and the Owner Participants, if any, and (iii) such replacement Leased Asset shall become subject to this Lease and be deemed to be the Leased Asset replaced for all purposes hereof to the same extent as if such replacement Leased Asset were an original Leased Asset. Lessor will, if requested by Lessee, confirm the vesting of any title in Lessee or person designated by Lessee in the manner specified in Section 41(c) hereof.

(b) *Lessor's Title to Replacement Leased Assets to Derive Exclusively From Persons Other than Lessee and Persons Unaffiliated With Lessee.* Lessee agrees that each replacement Leased Asset furnished pursuant to Section 29(a) hereof shall be acquired in the name of Lessor and the Owner Participants, if any, exclusively from persons unaffiliated with Lessee specifically for such replacement, and in no event shall Lessee or any Affiliate of Lessee be the predecessor in title to Lessor of any such replacement Leased Asset; *provided, however*, that Lessee may be transferor and the predecessor in title of any such replacement Leased Asset if but only if it shall have delivered to Lessor and the Trustee an opinion of counsel satisfactory to the Lessor to the effect that the transfer of title of such replacement Leased Asset from Lessee to Lessor and the Owner Participants, if any, would not be a fraudulent conveyance under applicable law and that Lessor and the Owner Participants, if any, have valid title thereto free and clear of all Encumbrances; and *provided, further, however*, that nothing in this Section 29(b) shall be deemed to prevent Lessee from furnishing services of any description in connection with such replacement Leased Assets.

(c) *Annual Certificate.* Within 120 days from the end of each calendar year, Lessee shall deliver to Lessor a certificate of an Authorized Lessee Representative (i) describing each Leased Asset which

has been replaced pursuant to this Section 29 during the calendar year preceding the filing of such certificate and setting forth the cost thereof; (ii) identifying and describing the replacement Leased Asset and (iii) stating that Subsection 29(b) hereof has been complied with in connection with such replacements. Lessee will furnish Lessor with such additional information concerning such replacements as Lessor may reasonably request.

30. RIGHT OF LESSOR AND OWNER PARTICIPANTS, IF ANY, TO PERFORM FOR LESSEE. If Lessee fails to make any payment of Rent required to be made by it hereunder or fails to perform or comply with any of its agreements contained herein, Lessor and the Owner Participants, if any, may itself or themselves make such payment or perform or comply with such agreement, and the amount of such payment and the amount of the reasonable expenses of Lessor and the Owner Participants, if any, incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, together with interest thereon at the rate of $9\frac{1}{8}\%$ shall be deemed Supplemental Rent, payable by Lessee upon demand in Immediately Available Funds.

31. PURCHASE OBLIGATIONS ON TERMINATION OF COAL PURCHASE AGREEMENT. In the event that (a) Hydro shall at any time have either (i) both (A) given notice of termination of the Coal Purchase Agreement pursuant to Section 10 thereof and (B) delivered to Lessor and the Trustee a certified copy of a formal resolution of the governing body of Hydro setting forth a finding of the governing body of Hydro made in good faith that the utilization of coal to be purchased by Hydro under the Coal Purchase Agreement is no longer economically feasible due to developments beyond Hydro's control or (ii) terminated the Coal Purchase Agreement pursuant to Section 11 thereof because of force majeure and (b) Lessee shall have elected pursuant to the Coal Purchase Agreement not to continue the leasing of the Leased Assets hereunder, then Lessee shall give written notice of the effective date of such termination to Lessor, the Trustee and each Noteholder, no more than 180 days nor less than 170 days prior to such effective date, and on such effective date Lessee will purchase (1) each Leased Asset then leased under a Basic Lease Supplement at a price equal to the sum of all accrued but unpaid Basic Rent due on such date plus the Termination Value of each such Asset on such date, (2) each Leased Asset then leased under an Interim Lease Supplement, if any, at a price equal to all accrued but unpaid Interim Rent due in respect thereof on such date plus all Lessor Payments then or theretofore made or accrued in respect thereof and (3) all Transferred Assets, if any, at a price equal to all Lessor Payments then or theretofore made or accrued in respect thereof plus interest on all such amounts (to the extent not otherwise then or previously recouped by Lessor) at the Minimum Commercial Lending Rate from the date such payments were made to such effective date. All such purchase prices shall be paid in Immediately Available Funds. In addition, on such date, Lessee will repay in full in Immediately Available Funds all Lessor Payments, if any, other than those repaid through payments of purchase prices as provided above plus interest thereon (to the extent not otherwise then or previously recouped by Lessor) at the Minimum Commercial Lending Rate from the date or dates such Lessor Payments were made or accrued to such date of payment.

32. PURCHASES AND EXTENSIONS. (a) *Purchase Option*. On any Quarterly Payment Date occurring on or after April 1, 1991 ("notice date"), Lessee, at its option, may give notice to the Lessor, the Trustee and each Noteholder of its election to purchase, on the next succeeding Quarterly Payment Date ("purchase date") all of the Leased Assets then leased under Basic Lease Supplements on the purchase date, and on the purchase date shall by payment in Immediately Available Funds purchase all such Leased Assets at a price equal to all Rent due on the purchase date plus the higher of (x) the Optional Termination Value thereof on the purchase date or (y) the Fair Market Sales Value thereof on the notice date. Lessor agrees that, promptly after receipt of any such notice, it will give notice pursuant to Section 2.7 of the Indenture of the prepayment on the purchase date pursuant to Section 2.3 of the Indenture of all the Notes then outstanding. Within 30 days after any notice date, Lessor and Lessee shall confer with regard to the determination of Fair Market Sales Value as of the notice date and, within

a reasonable time thereafter, either party may invoke the Appraisal Procedure in respect of any Leased Asset with respect to the value of which no agreement was reached. In the event that agreement as to values shall not have been reached, or the Appraisal Procedure concluded, by the purchase date, then Lessee shall on the purchase date pay such Optional Termination Value to Lessor with the balance, if any, of other payments to be made later, when agreement is reached or the Appraisal Procedure is concluded, as may be the case.

(b) *Basic Term Purchase Option.* If no Event of Default or other event or condition which after notice or lapse of time or both would become an Event of Default shall have occurred and be continuing and this Lease shall not have been earlier terminated, Lessee shall be entitled, at its option, upon written notice to Lessor at least 180 days prior to the expiration of the Basic Term with respect to any Leased Asset, to purchase such Leased Asset at the end of such Basic Term at a price equal to the Fair Market Sales Value thereof at the end of such Basic Term. On the date of such purchase Lessee shall pay Lessor the purchase price of such Leased Asset in Immediately Available Funds, and Lessor shall transfer all its right, title and interest in and to such Leased Asset to Lessee in the manner specified in Section 41(c) hereof.

(c) *Re-Lease at Expiration of Basic Term.* If no Event of Default or other event or condition which after notice or lapse of time or both would become an Event of Default shall have occurred and be continuing and this Lease shall not have been earlier terminated, Lessee shall be entitled at its option upon written notice to Lessor at least 180 days prior to the expiration of a Basic Term with respect to any Leased Asset, to re-lease such Leased Asset for such reasonable period as may be specified by Lessee at the Fair Market Rental Value of such Leased Asset at the end of the Basic Term and on substantially the same terms and conditions provided for herein.

33. LOSS, DESTRUCTION, CONDEMNATION OR DAMAGE. (a) *Event of Loss to a Designated, Transferred or Leased Asset Prior to or During Interim Term.* If an Event of Loss occurs with respect to a Designated or Transferred Asset or to a Leased Asset during any Interim Term, Lessee shall within 30 days pay to Lessor in Immediately Available Funds (i) in the case of Designated or Transferred Assets, all Lessor Payments then or theretofore made in respect thereof plus interest thereon (to the extent not otherwise then or previously recouped by Lessor) at the Minimum Commercial Lending Rate from the date or dates such amounts were expended to such date of payment and (ii) in the case of Leased Assets leased under Interim Lease Supplements, all Lessor Payments then or theretofore made in respect thereof plus interest thereon (to the extent not otherwise then or previously recouped by Lessor) at the Minimum Commercial Lending Rate from the date or dates such amounts were expended to the date Interim Rent began to accrue plus all accrued but unpaid Interim Rent, if any, payable in respect thereof. Upon receipt of any such payment Lessor shall transfer to Lessee the title of Lessor and the Owner Participants, if any, in the affected Transferred and Leased Assets in the manner specified in Section 41(c) hereof. Notwithstanding the foregoing, the Lessee may (with Lessor's prior written consent), as an alternative to making such payments, at Lessee's sole expense without adversely affecting the tax position of Lessor and the Owner Participants, if any, substitute assets of equivalent type (and vest Lessor and the Owner Participants, if any, with title thereto) if Lessor and the Owner Participants, if any, shall be entitled to substantially the same after-tax benefits of investment tax credit and depreciation and interest deductions as Lessor and the Owner Participants, if any, had with respect to the Asset being replaced.

(b) *Payment of Stipulated Loss Value Upon an Event of Loss During Basic Term in Certain Circumstances.* If an Event of Loss occurs with respect to any Leased Asset leased under a Basic Lease Supplement, Lessee shall be obligated to replace such Asset, subject to the exceptions provided for in, and in the manner and within the time required by, and in full compliance with, Section 29 hereof. If at any time as provided in Section 29(a) hereof Lessee becomes obligated to make sales and payments required by this Section 33(b) and Section 23(c) hereof and Lessee elects to make payments under this Section 33(b) for Leased Assets with respect to which such an Event of Loss shall have occurred, then Lessee shall

within 60 days of the 30th consecutive day referred to in Section 29 hereof deliver to Lessor and the Trustee a certificate of an Authorized Lessee Representative identifying the Leased Asset or Assets with respect to which such an Event of Loss shall have occurred and stating that such election is applicable and stating that Lessee, on a Business Day specified in such certificate not less than 30 days after the delivery of such certificate and within 90 days of the 30th consecutive day referred to in Section 29 hereof, will pay to Lessor in Immediately Available Funds the Stipulated Loss Value (computed as of the date such payment is made) for such Leased Assets, and Lessee shall make such payment in full on the Business Day so designated. Upon payment in full of such Stipulated Loss Value (i) the obligation of Lessee to pay Basic Rent hereunder with respect to such Leased Asset on all Quarterly Payment Dates after the date of payment of such Stipulated Loss Value shall terminate, and (ii) Lessor shall, if requested, transfer title to the Leased Asset in the manner specified in Section 41(c) hereof.

(c) *Application of Other Payments Upon an Event of Loss.* Any payments received at any time by Lessor or by Lessee from any governmental authority (other than Hydro) or other party (except Lessee) as a result of the occurrence of an Event of Loss with respect to any Designated, Transferred or Leased Assets will be applied as follows:

(i) Any such payments received at any time by Lessee shall be promptly paid to Lessor for application pursuant to the following provisions of this Subsection (c), except that Lessee may retain any amounts which Lessor would at the time be obligated to pay to Lessee under said provisions.

(ii) In respect of Assets which Lessee is required to replace but has not replaced, such payments shall be held by Lessor until required to be applied in accordance with clause (iii) or (iv) below.

(iii) In respect of Assets which Lessee is required to replace and which Lessee has replaced, so much of such payments as shall not exceed the actual replacement cost incurred by Lessee shall be paid over to Lessee (unless an Event of Default or other event or condition which with notice or lapse of time or both would become an Event of Default has occurred and is continuing) in reimbursement of the replacement cost incurred by Lessee upon receipt by Lessor of a certificate of an Authorized Lessee Representative that an amount not less than such payments has been expended in effecting such replacement and that such replacement has been duly effected.

(iv) If Lessee shall have become obligated to pay the Stipulated Loss Value of any such Asset pursuant to the preceding Subsection (b), so much of such payments as shall not exceed such Stipulated Loss Value shall be applied in reduction of Lessee's obligation to pay such Stipulated Loss Value, if not already paid by Lessee, or, if already paid by Lessee, shall be applied (unless an Event of Default or other event or condition which after notice or lapse of time or both would become an Event of Default shall have occurred and be continuing) to reimburse Lessee for its payment of such Stipulated Loss Value.

(v) The balance, if any, of such payments remaining thereafter shall be retained by or paid over to Lessor.

(d) *Application of Payments Not Relating to an Event of Loss.* Any payments received at any time by Lessor from any governmental authority (other than Hydro) or other party with respect to any condemnation, confiscation, theft or seizure of, or requisition of title to, or loss or damage to, any Leased Asset not constituting an Event of Loss, will be paid over to Lessee for application in payment of repairs or for replacement of property in accordance with the provisions of Sections 15 and 16 hereof, if not already paid by Lessee, and any balance remaining after compliance with said Sections with respect to such loss or damage shall be paid to Lessee provided that no Event of Default or other event or condition which after notice or lapse of time or both would become an Event of Default shall have occurred and be continuing.

(e) *Other Dispositions.* Any amounts not payable to Lessee pursuant to this Section or Section 17 hereof solely because an Event of Default or other event or condition which after notice or lapse of time or both would become an Event of Default shall have occurred and be continuing, shall be held by Lessor and

shall be paid over to Lessee when such Event of Default or other event or condition shall cease to be continuing, unless Lessor shall have theretofore declared this Lease to be in default pursuant to Section 28 hereof, in which event such amounts shall be retained by Lessor.

(f) *Requisition for Use.* In the event of the requisition of any or all of (i) the Designated Assets in respect of which Pre-Purchase Advances or Service Payments have been made or (ii) Transferred or Leased Assets in either case for use by the United States federal government or any other public instrumentality prior to or during any Interim or Basic Term, Lessee shall promptly notify Lessor of such requisition and all of Lessee's obligations hereunder shall continue to the same extent as if such requisition had not occurred. All payments received by Lessor or Lessee from the requisitioning authority for use of such Designated, Transferred or Leased Assets prior to or during the Term thereof shall be paid over to, or retained by, Lessee; and all payments received by Lessor or Lessee from the requisitioning authority for use of such Designated, Transferred or Leased Assets after the Term shall be paid over to, or retained by, Lessor unless theretofore purchased by Lessee, in which event such payments shall be paid over to, or retained by, Lessee.

34. **GENERAL NON-TAX INDEMNIFICATION.** Lessee hereby agrees, whether or not any of the transactions contemplated hereby shall be consummated, to assume liability for, and does hereby agree to indemnify, protect, save, defend and keep harmless Lessor, the Owner Participants, if any, the Trustee, the Trust Estate, each Note Purchaser and each Noteholder, and their respective successors, assigns, agents, servants and employees from and against, and without limitation as to amount, any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including without limitation legal fees and expenses, of whatsoever kind and nature (for purposes of this Section 34 collectively called "Expenses"), imposed on, asserted against or incurred by Lessor, the Owner Participants, if any, the Trust Estate, the Trustee, any Note Purchaser or any Noteholder or any of their respective successors, assigns, agents and servants, in any way relating to or arising out of (a) this Lease, any Bill of Sale or Invoice, the Hydro Consent and Agreement, the Agreement and Disclaimer, the Indenture, the Participation Agreement, the Coal Purchase Agreement, the Owner Participants' Agreement, if any, or the Notes, (b) the manufacture, fabrication, purchase, acceptance, rejection, ownership, delivery, non-delivery, license, lease, possession, use, operation, condition, replacement, sale or other disposition of any Designated, Transferred or Leased Asset, including without limitation (i) latent and other defects, whether or not discoverable by Lessor or Lessee, and any claim for trademark or copyright infringement, (ii) in the case of the Lessor and the Owner Participants, if any, their respective obligations to make payments to the Trustee, the Note Purchasers, the Noteholders and the holders of Deposit Receipts under or pursuant to the Indenture or the Participation Agreement or both, (iii) all uninsured risks and all risks with respect to which Lessee is either a self insurer or which are within the deductibles of insurance policies, as provided in Section 17 hereof, (iv) all loss, injury or damage to any person or any property of another, and (v) all suits or proceedings instituted or claims made against Lessee, Hydro, Lessor, the Owner Participants, if any, the Note Purchasers, the Noteholders, the holders of Deposit Receipts, the Trustee or the Trust Estate jointly or severally based on any claim that the purchase or use of any material, machinery, plant, equipment, apparatus or process used by Lessee in the performance of its obligations pursuant to Section 3 hereof (including without limitation the use of Designated, Transferred or Leased Assets) constitutes an infringement of any claim of any letters patent, it being understood that if continued use be enjoined Lessee will within a reasonable time secure at its expense the right to continued use of such material, machinery, plant, equipment, apparatus or process or at its expense replace it with non-infringing material, machinery, plant, equipment, apparatus or process to the extent practicable and (c) the offer, sale or delivery of any Deposit Receipt or Note in the manner provided in the Participation Agreement and the Indenture; *provided however*, that the indemnity provided for in this Section 34 shall not extend to any Expense (A) resulting from claims of stockholders, as such, of any such person indemnified or the willful misconduct or gross negligence of the person indemnified or any successors, assigns, employees, agents or servants thereof, (B) so long as no Event of Default shall have occurred and be continuing, to the extent attributable

to acts or events (other than Expenses based on circumstances arising prior to the time such Transferred or Leased Assets have become the property of Lessor and the Owner Participants, if any), which occur after the Designated, Transferred or Leased Assets are no longer subject to the Lease, including any renewal thereof, or to acts or events which occur after possession of the Transferred or Leased Assets has been delivered to the Lessor in accordance with Section 25 of this Lease, (C) which is a "tax, fee or other charge" within the meaning of such terms as defined in Section 35 hereof or (D) any matter indemnification for which is provided in Section 36 hereof. If any person entitled to indemnity hereunder or the Lessee has knowledge of any liability hereby indemnified against, it shall give prompt written notice thereof to the Lessee and Hydro or the party entitled to be indemnified, as the case may be, and, upon receipt of such notice, Lessee shall assume the complete defense including employment of counsel and payment of all expenses. For all purposes of this Section 34, it is understood and agreed that Lessor, the Owner Participants, if any, the Trustee, the Note Purchasers and the Noteholders have no duties or obligations of any character whatsoever with respect to the manufacture, fabrication, acceptance, rejection, ownership, possession, use, operation, condition or other disposition of any Designated, Transferred or Leased Assets, and no claim of willful misconduct or gross negligence may be predicated in any way upon any such alleged duty. In the event that any indemnifying party hereunder shall contend that its duty to indemnify is excused or otherwise affected by any alleged willful misconduct or gross negligence of an indemnified party the burdens of coming forward with evidence and of persuasion with respect thereto shall be borne exclusively by the indemnifying party making such contention.

35. **GENERAL TAX INDEMNIFICATION.** The Lessee agrees to pay as Supplemental Rent, and on written demand to indemnify, defend and hold harmless each Indemnatee (which term, for the purposes of this Section 35, shall mean the Trustee, the Trust Estate, the Lessor, the Owner Participants, if any, each Note Purchaser, each holder of a Deposit Receipt and each Noteholder) from all license and registration fees and all taxes, levies, imposts, duties, charges or withholdings (including, without limitation, any interest equalization tax) of any nature whatsoever together with any penalties, fines or interest thereon (collectively, "taxes, fees or other charges") imposed against Lessor, the Owner Participants, if any, the Lessee, Hydro, the Trustee, the Trust Estate, any holder of a Deposit Receipt, any Note Purchaser or any Noteholder or the Designated, Transferred or Leased Assets or any part thereof by any federal, state, provincial or local government or taxing authority in the United States or Canada upon or with respect to the Designated, Transferred or Leased Assets or any part thereof or upon or with respect to the purchase, ownership, delivery, licensing, leasing, possession, use, operation, replacement, return or other disposition thereof, or upon or with respect to the rentals, receipts or earnings arising therefrom, including, without limitation, interest, principal and premium, if any, payable on the Notes or the Deposit Receipts or upon or with respect to the sale of coal pursuant to the Coal Purchase Agreement, or any payments for coal or other payments thereunder, or upon or with respect to this Lease, the Hydro Consent and Agreement, the Indenture, the Participation Agreement, the Owner Participants' Agreement, if any, the Coal Purchase Agreement, the Deposit Receipts, the Notes or the issuance, acquisition or subsequent transfer thereof (excluding the Lessor's or Owner Participants' or the Trustee's or the Note Purchasers' or the Noteholders' franchise taxes and taxes, fees or other charges on, based on, or measured by, the net income or taxable income of the Lessor, the Owner Participants, if any, the Trustee, any Note Purchaser, or any Noteholder, imposed by a federal, state or local government or taxing authority in the United States; *provided, however*, that notwithstanding the foregoing, there shall not be excluded any taxes, fees or other charges imposed by any jurisdiction on, based on, or measured by, net income or taxable income resulting directly or indirectly—whether by inclusion of an item in gross income, disallowance of a credit against tax, disallowance of a deduction for depreciation or otherwise—from Lessee's receipt or right to receive any refund or credit pursuant to any contract with any Vendor, from any payment by a Vendor in satisfaction of a claim against a Vendor with respect to the Designated, Transferred or Leased Assets under any warranty or indemnity provision of any contract with a Vendor or for failure to meet a specification contained therein or attached thereto, from payment by the Lessee to a Vendor of any amount in respect of the Designated, Transferred or Leased Assets in excess of the Purchase Price thereof pursuant

to Section 20 of this Lease, except to the extent that the Lessee is required to indemnify therefor pursuant to Section 36(a) or 36(b) of this Lease or from substitution or replacement by Lessee of a Leased Asset pursuant to the provisions of Section 23, 29 or 33) unless, and only to the extent that, any such tax, fee or other charge is being contested by the Lessee in good faith by appropriate proceedings so long as such proceedings in the reasonable opinion of each Indemnatee do not involve any danger of the sale, forfeiture or loss of the Trust Estate or any thereof or any of the Designated, Transferred or Leased Assets or any interest therein and such proceedings suspend the obligation of each Indemnatee to pay such tax, fee or other charge. The Lessee further agrees that, with respect to any payment or indemnity hereunder, such payment or indemnity shall include any amount necessary to hold the recipient of the payment or indemnity harmless on an after-tax basis from all taxes required to be paid by such recipient with respect to such payment or indemnity (whether made by the Lessee hereunder or by Hydro under Section 6.1 of the Coal Purchase Agreement) under the laws of any federal, state, provincial, or local government or taxing authority in the United States or Canada; *provided, however*, that, if any Indemnatee realizes a tax benefit by reason of such payment or indemnity (whether such tax benefit shall be by means of investment tax credit, depreciation deduction or otherwise), such Indemnatee shall pay the Lessee an amount equal to the sum of such tax benefit plus any tax benefit realized as the result of any payment made pursuant to this proviso, when, as, if and to the extent realized; and, *provided, further, however*, that such sum shall not exceed the amounts previously paid by the Lessee to Lessor pursuant to this Section 35 and shall not be payable before the Lessee shall have made all payments or indemnities required pursuant to this Section 35. Each Indemnatee shall in good faith use reasonable efforts in filing its tax returns and in dealing with taxing authorities to seek and claim any tax benefit.

Notwithstanding the foregoing, there shall be excluded from indemnification under this Section 35 any taxes, fees or other charges imposed or assessed by or for the account of any Federal, provincial or local government or taxing authority in Canada ("Canadian Taxes") on, based on or measured by the net income of any Indemnatee or the gain realized on the sale or other disposition or deemed disposition of the undivided interest of any Owner Participant or on the sale or other disposition or deemed disposition of a Note or of a Deposit Receipt, if (but only if and to the extent that) both of the following conditions exist: (1) such Canadian Taxes would be payable even if the income (or gain) in question had been characterized by such government or taxing authority as income (or gain) exclusively from sources outside Canada; and (2) an essential factor in the applicability of such Canadian Taxes is the existence of a connection between such Indemnatee and Canada, other than a connection attributable to the transactions arising from this Lease, the Participation Agreement, the Hydro Consent and Agreement or the Coal Purchase Agreement. There shall also be excluded from indemnification under this Section 35 any excise tax in the nature of a securities or stock transfer tax imposed or assessed upon or with respect to the transfer of the undivided interest of any Owner Participant, a Note or a Deposit Receipt, *provided* that any such excise tax imposed by any Federal, provincial or local government or taxing authority in Canada ("Canadian excise tax") shall be excluded from indemnity under this Section 35 if (but only if) an essential factor in the applicability of such Canadian excise tax is the existence of a connection between such transfer and Canada, other than a connection attributable to the transactions arising from this Lease, the Participation Agreement, the Hydro Consent and Agreement or the Coal Purchase Agreement.

If any proceeding (including without limitation the written claim or written threat of such proceeding) is commenced against any Indemnatee for any such tax, fee or other charge, such Indemnatee shall promptly notify the Lessee and Hydro. If reasonably requested by the Lessee in writing, such Indemnatee shall upon receipt of indemnity satisfactory to it and at the expense of the Lessee (including without limitation, all costs, expenses, losses, legal and accountants' fees and disbursements, penalties and interest) in good faith contest (or shall permit the Lessee, if desired by the Lessee, to contest) in the name of the Lessee or such Indemnatee, the validity, applicability or amount of such tax, fee or other charge by (a) resisting payment thereof if such Indemnatee in its sole discretion shall determine such course of action to be appropriate, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment be made, using reasonable efforts to obtain a refund thereof in appropriate administrative and judicial proceedings. If any Indemnatee shall obtain a refund of all

or any part of such tax, fee or other charge paid by Lessee, such Indemnatee shall pay the Lessee the amount of such refund; *provided, however*, that such amount shall not be payable before such time as the Lessee shall have made all payments or indemnities then due under this Section 35. If in addition to such refund such Indemnatee shall receive an amount representing interest on the amount of such refund, the Lessee shall be paid that proportion of such interest which is fairly attributable to taxes, fees or other charges paid by the Lessee prior to the receipt of such refund. The Lessee shall not be deemed to be in default under any of the above indemnification provisions so long as it or any Indemnatee shall diligently prosecute such contest and such proceedings in the reasonable opinion of each Indemnatee do not involve any danger of the sale, forfeiture, or loss of the Trust Estate or any thereof or any of the Designated, Transferred or Leased Assets or any interest therein and such proceedings suspend the obligation of each Indemnatee to pay such tax, fee or other charge. In case any report or return is required to be made with respect to any obligation of the Lessee under this Section 35 or arising out of this Section 35, the Lessee will either make such report or return in such manner as will show the ownership of the Transferred or Leased Assets in Lessor, and send a copy of such report or return to the Lessor, or will notify the Lessor of such requirement and make such report or return in such manner as shall be satisfactory to the Lessor.

36. SPECIAL TAX INDEMNIFICATION. (a) *Indemnity for Loss of Investment Credit*. If the Lessor or any Owner Participant entitled thereto shall lose the benefit of any portion of the full 7% investment credit allowed by Section 38 of the Code for "new section 38 property" with respect to the full amount of Lessor's Cost (calculated for purposes of this Section 36 without subtraction of the amount of any refunds paid by any Vendor to Lessee or Lessor or the Owner Participants, if any, pursuant to any contract with such Vendor) for any of the Transferred or Leased Assets (other than those, if any, listed on Schedule 6) under any circumstances or for any reason whatsoever, the Lessee shall, subject to the provisions of Subsection (d) below, pay the Lessor and any Owner Participant entitled thereto (1) a sum which, after deduction of all taxes required to be paid by the Lessor or any such Owner Participant in respect of the receipt of such sum under the laws of any federal, state, provincial, or local government or taxing authority in the United States or Canada, shall be equal to the sum of the amount of the investment credit so lost and the amount of any penalties or additions to tax which are not deductible for federal income tax purposes, plus (2) the amount of any interest and the amount of any penalties or additions to tax which are deductible for United States federal income tax purposes which may be payable to the United States government by the Lessor or any such Owner Participant in connection with such loss, which amounts shall be payable in Immediately Available Funds at such time as the tax and interest attributable to such loss is payable (but not sooner than 30 days after receipt by the Lessee of written notice from the Lessor or any such Owner Participant); *provided, however*, that the Lessee shall not be required to make such payments if such loss results because of the occurrence of any of the following events:

(i) A voluntary transfer by the Lessor or any such Owner Participant of legal title to the Transferred or Leased Assets to anyone (not including any transfer of a security interest therein to the Trustee or any transfer which is permissible hereunder or under the Participation Agreement, the Indenture and the Owner Participants' Agreement, if any) or a disposition by the Lessor or any such Owner Participant of any interests in the Transferred or Leased Assets (except by way of a grant of a security interest to the Trustee or any transfer which is permissible hereunder and under the Participation Agreement, the Indenture and the Owner Participants' Agreement, if any) or a reduction by the Lessor or any such Owner Participant of its interest in the rents and profits from the Transferred or Leased Assets, if such transfer, disposal or reduction by the Lessor or any such Owner Participant (A) shall be the direct cause of such loss and (B) shall occur at any time while the Transferred or Leased Assets are leased under this Lease and none of the Events of Default listed in Section 27 of this Lease has occurred and is continuing unremedied and (C) shall not have been in compliance with the applicable provisions hereof and of the Participation Agreement, the Indenture and the Owner Participants' Agreement, if any.

(ii) An amendment of the Indenture or the Participation Agreement by the Lessor without any prior written consent required by the Participation Agreement, the Indenture or this Lease, if such amendment shall be the sole and direct cause of such loss.

(iii) The failure of the Lessor or any such Owner Participant to have sufficient liability for tax within the meaning of Section 46 of the Code against which to credit such investment credit for the Transferred or Leased Assets.

(iv) The failure of the Lessor or any such Owner Participant to claim such investment credit for the Transferred or Leased Assets in its income tax returns for the appropriate year (unless such failure is attributable to an inaccurate or incomplete statement of Lessee made pursuant hereto) or to follow the proper procedure in claiming such investment credit in such tax returns for such year, if such failure to claim such investment credit or to follow such procedure shall preclude the Lessor or any such Owner Participant from claiming such investment credit.

(v) The failure of the Lessor or any such Owner Participant to take timely action in contesting a claim made by the Internal Revenue Service with respect to the loss of such investment credit for the Transferred or Leased Assets pursuant to paragraph (c) of this Section 36, if such failure precludes the right of the Lessor to contest with respect thereto such claim.

(vi) The action of the Internal Revenue Service contrary to the conclusions set forth in the ruling, if any, obtained and accepted by the Lessor referred to in Section 6 hereof, *provided, however*, that Lessor and any such Owner Participant shall be entitled to indemnification hereunder if such action is taken by the Internal Revenue Service directly or indirectly as a result of (A) any representation, fact, estimate, opinion or other statement made, stated or furnished by the Lessee or any officer, employee, agent or counsel thereof or any other person acting at Lessee's request (including any such statement made or furnished jointly with the Lessor or any such Owner Participant or any officer, employee, agent or counsel thereof) in connection with the obtaining of such ruling proving to be, or in the opinion of the Internal Revenue Service proving to be, fraudulent, untrue, incorrect, inaccurate, misleading, unreasonable or insufficient in whole or in part, (B) the Lessee or any officer, employee, agent or counsel thereof failing to state, or in the opinion of the Internal Revenue Service failing to state any material fact in connection with the obtaining of said ruling, or (C) the Lessee taking or failing to take, or being deemed by the Internal Revenue Service to have taken or to have failed to take, any action in respect of its income tax returns or otherwise which is, or in the opinion of the Internal Revenue Service is, inconsistent with or in contravention of any of the matters set forth in such ruling.

Anything in this Section 36 to the contrary notwithstanding, the Lessor and any such Owner Participant shall be entitled to full indemnification hereunder for any loss of investment credit sustained by them or it with respect to any Designated, Transferred or Leased Asset arising from any change in or modification of the law (including, without limitation, any change in or modification of any applicable Treasury Regulations) on or prior to the commencement of the Interim Term with respect thereto (or Basic Term if there is no Interim Term), but neither the Lessor nor any such Owner Participant shall be entitled to indemnification arising from any such change in the law after the commencement of the Interim Term with respect thereto (or Basic Term if there is no Interim Term).

(b) *Indemnity for Loss of Depreciation and Interest Deductions.* If the Lessor or any Owner Participant entitled thereto shall lose the benefit of (A) any portion of the depreciation deductions on any of the Transferred or Leased Assets on the basis of the depreciation period specified in Schedule 3 or 6, as applicable in accordance with the provisions of Section 167(m) of the Code under any of the methods of depreciation allowed by Section 167(b) of the Code, with respect to Lessor's Cost (calculated for purposes of this Section 36 without subtraction of the amount of any refunds paid by Vendor to Lessee or Lessor or any such Owner Participant pursuant to any contract with such Vendor) for the Transferred or Leased Asset in computing its taxable income for any year during which this Lease is in effect or (B) any portion of interest deductions with respect to amounts paid or accrued as interest on the Notes, under any circumstances or for any reason whatsoever then the Lessee shall,

subject to the provisions of Subsection (d) below, pay to the Lessor or any such Owner Participant an indemnity with respect to such loss determined as provided below; *provided, however*, that the Lessee shall not be required to pay any such indemnity if such loss results because of the occurrence of any of the following events:

(i) A voluntary transfer by the Lessor or any such Owner Participant of legal title to the affected Transferred or Leased Assets to anyone (not including any transfer of any security interest therein to the Trustee or any transfer which is permissible hereunder and under the Participation Agreement, the Indenture or the Owner Participants' Agreement, if any, or a disposition by the Lessor or any such Owner Participant of any interest in the affected Transferred or Leased Assets (except by way of a grant of a security interest to the Trustee or any transfer which is permissible hereunder and under the Participation Agreement, the Indenture or the Owner Participants' Agreement, if any) or a reduction by the Lessor or any such Owner Participant of its interest in the profits from the affected Transferred or Leased Assets, if such transfer, disposal or reduction by the Lessor or any such Owner Participant (A) shall be the direct cause of such Loss and (B) shall occur at any time while the affected Transferred or Leased Assets are leased under this Lease and none of the Events of Default listed in Section 27 of this Lease has occurred and is continuing unremedied and (C) shall not have been in compliance with the applicable provisions hereof and of the Participation Agreement, the Indenture and the Owner Participants' Agreement, if any).

(ii) An amendment of the Participation Agreement or the Indenture without any prior written consent required by the Participation Agreement, the Indenture or the Lease, if such amendment shall be the direct cause of such loss.

(iii) The failure of the Lessor, or any such Owner Participant to have sufficient gross income within the meaning of Section 61(a) of the Code against which to deduct such depreciation or interest.

(iv) The failure of the Lessor or any such Owner Participant to claim such depreciation or interest deductions in its income tax returns for the appropriate year (unless such failure is attributable to an inaccurate or incomplete statement of Lessee made pursuant hereto) or to follow the proper procedure in claiming such depreciation or interest deductions in such tax returns for such year, if such failure to claim such depreciation or interest deductions or to follow such procedure shall preclude the Lessor or any such Owner Participant from claiming such depreciation or interest deductions.

(v) The failure of the Lessor or any such Owner Participant to take timely action in contesting a claim made by the Internal Revenue Service with respect to the loss of such depreciation or interest deductions for the affected Transferred or Leased Assets pursuant to paragraph (c) of this Section 36 if such failure shall preclude the right of the Lessor or any such Owner Participant to contest such claim.

(vi) The action of the Internal Revenue Service contrary to the conclusions set forth in the ruling, if any, obtained and accepted by the Lessor referred to in Section 6 hereof, *provided, however*, that Lessor and any such Owner Participant shall be entitled to indemnification if such action is taken by the Internal Revenue Service directly or indirectly as a result of (A) any representation, fact, estimate, opinion or other statement made, stated or furnished by the Lessee or any officer, employee, agent or counsel thereof or by any other person at the request of Lessee (including any such statement made or furnished jointly with the Lessor or any such Owner Participant or any officer, employee, agent or counsel thereof) in connection with the obtaining of such ruling proving to be, or in the opinion of the Internal Revenue Service proving to be, fraudulent, untrue, incorrect, inaccurate, misleading, unreasonable or insufficient in whole or in part, (B) the Lessee or any officer, employee, agent or counsel thereof failing to state, or failing to state in the opinion of the Internal Revenue Service, any material fact in connection with the obtaining of said ruling or (C) the Lessee or any officer, employee, or counsel thereof or a third party at the request of Lessee taking or failing to take, or being deemed by the Internal Revenue Service to have taken or to have failed

to take, any action in respect of its income tax returns or otherwise which is, or in the opinion of the Internal Revenue Service is, inconsistent with or in contravention of any of the matters set forth in such ruling.

Anything in this Section 36 to the contrary notwithstanding, the Lessor and any such Owner Participant shall be entitled to full indemnification hereunder for any loss of depreciation and interest deductions sustained by it with respect to any Designated, Transferred or Leased Asset arising from any change in or modification of the law (including without limitation any change in or modification of any applicable Treasury Regulations), on or prior to the commencement of the Interim Term with respect thereto (or Basic Term if there is no Interim Term) but neither the Lessor nor any such Owner Participant shall be entitled to indemnification arising from any such change in the law after the commencement of the Interim Term with respect thereto (or Basic Term if there is no Interim Term).

Any indemnity payments required by any of the preceding paragraphs of this Subsection (b) shall be, with respect to each taxable year of the Lessor and any such Owner Participant, a sum which, after deduction of all taxes, fees and other charges required to be paid by the Lessor or any such Owner Participant in respect of the receipt of such sum under the laws of any federal, state, provincial or local government or taxing authority in the United States or Canada, shall be equal to the amount of any additional federal income taxes, interest and penalties required to be paid with respect to such year by reason of such loss of depreciation or interest deductions which may be payable to the United States government by the Lessor or any such Owner Participant in connection with such loss, and, except as otherwise provided in Section 37 hereof, shall be payable at such time as such additional income taxes are payable (but not sooner than thirty days after receipt by the Lessee of written notice from the Lessor or any such Owner Participant).

If the Lessor, or any such Owner Participant, as a result of such loss of depreciation deductions with respect to any year under circumstances which required the Lessee to indemnify the Lessor or any such Owner Participant with respect to such loss, becomes entitled to the benefit of additional depreciation deductions with respect to any subsequent year, the Lessor or any such Owner Participant shall pay the Lessee an amount equal to the sum of the tax benefit in respect of federal income taxes payable to the United States Government realized by the Lessor or any such Owner Participant with respect to such subsequent year because of such additional depreciation deductions plus any tax benefit realized under the laws of any federal, state, provincial or local government or taxing authority in the United States or Canada by reason of such payment; *provided, however*, that (i) such sum shall not exceed the excess of the amounts previously paid by the Lessee to the Lessor pursuant to this Section 36(b) over the amounts previously paid by the Lessor or any such Owner Participant to the Lessee pursuant to this Section 36(b), and (ii) such sum shall not be payable before such time as the Lessee shall have made all payments or indemnities then due pursuant to this Section.

(c) *Contest of Disallowance of Tax Benefits.* In the event a deficiency, assessment or other claim shall be made by the Internal Revenue Service which, if successful, would result in a loss of such investment credit or of depreciation or interest deductions with respect to the Designated, Transferred or Leased Assets under circumstances which would require the Lessee to indemnify the Lessor or any such Owner Participant for the loss, the Lessor hereby agrees, and each such Owner Participant will agree in the Owner Participants' Agreement, to take at Lessee's expense such action in connection with contesting such claim as the Lessee shall reasonably request in writing from time to time, *provided, however*, that:

(i) Within thirty days after notice by the Lessor or any such Owner Participant to the Lessee of such claim, the Lessee shall request that such claim be contested.

(ii) The Lessor or any such Owner Participant, at its sole option, may forego any and all administrative appeals, proceedings, hearings and conferences with the Internal Revenue Service in respect of such claim and may, at its sole option, either pay the tax claimed and sue for a refund in the

appropriate United States District Court, the United States Court of Claims, or both, as the Lessor or any such Owner Participant shall elect, or contest such claim in the United States Tax Court, considering, however, in good faith such request as the Lessee shall make concerning the most appropriate forum in which to proceed.

(iii) Prior to taking such action, the Lessee shall have furnished the Lessor or any such Owner Participant with an opinion of its tax counsel to the effect that a meritorious defense exists to such claim.

(iv) The Lessee shall have provided the Lessor or any such Owner Participant with specific written supplemental indemnification in a form and substance satisfactory to the Lessor or any such Owner Participant for any liability or loss which the Lessor or any such Owner Participant may incur as the result of contesting such claim and shall have agreed to pay the Lessor or any such Owner Participant on demand in Immediately Available Funds as Supplemental Rent all costs and expenses which the Lessor or any such Owner Participant may incur in connection with contesting such claim, including, without limitation, (A) reasonable attorneys' and accountants' fees and disbursements, (B) the amount of any interest, additional amount or penalty which may ultimately be payable to the United States Government as a result of contesting such claim, and (C) in the event the Lessor or any such Owner Participant shall pay the tax claimed and then seek a refund and the final determination of such claim shall be adverse to the Lessor, interest at a rate equal to the Minimum Commercial Lending Rate compounded quarterly on the amount of the tax paid attributable to the portion of the investment credit or depreciation or interest deduction lost, computed from the date of payment of such tax to the date the Lessee shall reimburse the Lessor or any such Owner Participant for the payment of such tax in accordance with the terms hereof. If any such claim referred to above shall be made by the Internal Revenue Service and the Lessee shall have reasonably requested the Lessor or any such Owner Participant to contest such claim as above provided and shall have duly complied with all of the terms of this Section 36(c), the Lessee's liability with respect to the investment credit or depreciation or interest deduction lost as a consequence of such claim shall become fixed upon final determination of the liability of the Lessor or any such Owner Participant for the tax claimed and after giving effect to any refund obtained, together with interest thereon; but in all other cases the liability of the Lessee shall become fixed at the time the Lessor or any such Owner Participant makes payment of the taxes, fees or other charges attributable to the portion of the investment credit or depreciation or interest deduction lost. In the case of any such claim by the Internal Revenue Service referred to above, the Lessor and each such Owner Participant will agree, to notify the Lessee promptly in writing of such claim and agrees not to make payment of the tax claimed for at least thirty days after the giving of such notice and agrees to give to the Lessee any relevant information relating to such claim which may be particularly within the knowledge of the Lessor or any such Owner Participant and otherwise to cooperate with the Lessee in good faith in order to contest any such claim effectively.

(d) *Replacement Leased Assets.* Notwithstanding the provisions of Subsections (a) and (b) above, the Lessee shall not be required to indemnify the Lessor or any such Owner Participant for loss of investment tax credit or the benefits of depreciation and interest deductions attributable to any Leased Asset which is substituted or replaced pursuant to provisions of Section 23, 29 or 33 hereof with new property having a cost at least equal to the original cost of the Leased Asset being replaced and providing net tax benefits which, in the opinion of the Lessor, are at least as valuable as the tax benefits lost. In such event, Lessee shall pay to the Lessor or any such Owner Participant an amount equal to interest at the Minimum Commercial Lending Rate on the amount of the tax benefits lost for the period commencing with the date on which such loss of such tax benefits occurs and ending with the date on which the tax benefits attributable to the replacement Leased Asset are realized.

(e) *Special Definitions.* For purposes of Subsections (a), (b) and (c) of this Section 36, (i) the term "Lessor" shall mean WHITKATH INC. or any other corporation which is the successor or assign of

WHITKATH INC. and is a member of the affiliated group of corporations, within the meaning of Section 1504 of the Code, of which WHITKATH INC. is a member and (ii) the term "Owner Participant" shall mean each party (other than Lessor) to the Owner Participants' Agreement or any other corporation which is the successor or assign of such party and is a member of the affiliated group of corporations, within the meaning of Section 1504 of the Code, of which such party is a member.

37. SURVIVAL AND EFFECT OF INDEMNITIES. The indemnities of the Lessee provided for in this Agreement, and the Lessee's obligations under any and all thereof, shall survive (a) the purchase of the Notes by the Note Purchasers, (b) the taking of title to Designated, Transferred or Leased Assets by Lessor and the Owner Participants, if any, (c) any purchase by Lessee or Hydro of any or all of the Designated, Transferred or Leased Assets, (d) any investigation or other action taken by any person indemnified and (e) the expiration or other termination of this Lease or the Coal Purchase Agreement. The Lessee's obligations under the indemnities provided for in this Agreement shall be those of a primary obligor (and not of a guarantor or surety) whether or not the person indemnified shall also be indemnified with respect to the same matter under the terms of some other instrument or any other document or instrument, and the person seeking indemnification from the Lessee pursuant to any provisions of this Agreement may proceed directly against the Lessee without first seeking to enforce any other right of indemnification. All amounts payable by Lessee pursuant to any indemnity set forth herein shall be Supplemental Rent payable directly to the person indemnified in Immediately Available Funds. Upon the payment in full by the Lessee of any indemnity provided for under this Agreement, the Lessee shall be subrogated to any right of the person indemnified in respect of the matter as to which such indemnity was paid.

38. CORPORATE EXISTENCE AND MERGER OF LESSEE; SUBLEASING TO AFFILIATE. The Lessee shall at all times maintain its corporate existence and, unless and until it shall become incorporated under Pennsylvania law, its qualification in Pennsylvania as a foreign corporation except as permitted by this Section. The Lessee shall not consolidate with or merge into any other corporation or convey, transfer or lease substantially all of its assets as an entirety to any Person (which term, for the purposes of this sentence, means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof), unless:

(a) The corporation formed by such consolidation or into which the Lessee is merged or the Person which acquires by conveyance, transfer or lease substantially all of the assets of the Lessee as an entirety shall be a corporation organized and existing under the laws of the United States of America or any State or the District of Columbia and shall execute and deliver to the Lessor, and, the Owner Participants, if any, the Trustee and each Noteholder an agreement in form satisfactory to the Lessor, and, the Owner Participants, if any, the Trustee and each Noteholder, containing an assumption by such Person of the due and punctual performance and observance of each covenant and condition of the Participation Agreement, the Coal Purchase Agreement and this Lease to be performed or observed by the Lessee.

(b) Immediately after giving effect to such transaction (i) the Coal Purchase Agreement would become an obligation of such Person and (ii) no Event of Default under the Coal Purchase Agreement or this Lease and no event or condition which after notice or lapse of time or both would become such an Event of Default shall have occurred and be continuing.

(c) The Lessee shall have delivered to the Lessor, the Owner Participants, if any, the Trustee and each Noteholder an opinion of counsel satisfactory to the Lessor, the Owner Participants, if any, the Trustee and each Noteholder, stating that such consolidation, merger, conveyance, transfer or lease and the assumption agreement mentioned in clause (a) above comply herewith and that all conditions precedent herein provided for relating to such transaction have been complied with.

Upon any consolidation or merger or any conveyance, transfer or lease of substantially all of the assets of the Lessee as an entirety in accordance with this Section, the successor corporation formed by such

consolidation or into which the Lessee is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Lessee under this Lease with the same effect as if such successor corporation had been named as the Lessee herein. No such conveyance, transfer or lease of substantially all of the assets of the Lessee as an entirety shall have the effect of releasing the Lessee or any successor corporation which shall theretofore have become such in the manner prescribed in this Section from its liability hereunder. Nothing contained herein shall permit any lease, sublease or other arrangement for the use, operation or possession of the Mine, the Loading Site or the Transferred or Leased Assets except in compliance with the applicable provisions of this Lease.

Unless an Event of Default or other event or condition which, with notice or lapse of time or both, would become an Event of Default shall have occurred and be continuing, Lessee may sublicense or sublease all or any part of the Transferred or Leased Assets to an Affiliate of Lessee who covenants to perform all the covenants of this Lease applicable to the Assets so subleased, *provided, however*, that the rights of such sublessee shall be subject and subordinate to all the terms of this Lease. No such sublease shall affect or reduce any of Lessee's rights or obligations hereunder, and all obligations of Lessee hereunder shall continue in full force and effect as the obligations of a principal and not a guarantor or surety, to the same extent as if no sublease had been made. Upon the occurrence and during the continuance of an Event of Default hereunder, Lessor shall have the right to collect all rent and other moneys payable under any sublease of the Transferred or Leased Assets, and Lessee hereby assigns such sublease rent and other moneys to Lessor, and Lessee at its expense agrees to perfect such assignment by all necessary filings contemporaneously with the effectiveness of any such sublease, such rent and other monies to be held by Lessor and applied to the discharge of Lessee's obligations hereunder and any balance remaining at the end of the Term to be retained by Lessor.

39. **NOTICES.** All notices required under the terms and provisions hereof shall be in writing, and any such notice shall be deemed to have been given when sent by registered or certified mail, postage prepaid, addressed (i) if to Lessee, at 71 Broadway, New York, N. Y. 10006, Attention: Treasurer, or to such other address as Lessee shall from time to time designate in writing to Lessor, Hydro and the Trustee, (ii) if to Lessor, c/o Morgan Guaranty Trust Company of New York, 23 Wall Street, New York, N. Y. 10015, Attention: Loan Department or to such other address as Lessor shall from time to time designate in writing by notice to Lessee, Hydro and the Trustee, (iii) if to the Trustee, at 111 Wall Street, New York, N. Y. 10015, Attention: Corporate Securities Services Department, or to such other address as the Trustee shall from time to time designate in writing by notice to Lessee, Lessor and Hydro, (iv) if to Hydro at 620 University Avenue, Toronto, Ontario, Canada M5G 1X6, Attention: Secretary or to such other address as Hydro shall from time to time designate in writing by notice to Lessee, Lessor and the Trustee and (v) to the Owner Participants, if any, at their addresses specified in or pursuant to the Owner Participants' Agreement. Lessee shall furnish the Trustee a sufficient number of copies for transmission to each Noteholder of all reports, notices, requests, demands, certificates and other instruments furnished hereunder.

40. **FURTHER ASSURANCES; ANNUAL CERTIFICATES.** Lessee will promptly and duly execute and deliver to Lessor such further documents and assurances and take such further action as Lessor may from time to time reasonably request in order to carry out more effectively the intent and purpose of this Lease and to establish and protect the rights and remedies created or intended to be created in favor of Lessor hereunder.

Lessee also agrees to furnish Lessor, the Owner Participants, if any, the Trustee and each Noteholder within 120 days after the close of each calendar year in addition to the reports and certificates required by Sections 16(d), 17(e) and 29(c) hereof a certificate of an Authorized Lessee Representative to the effect that the signer has reviewed the relevant terms of this Lease and has made, or caused to be made under his supervision, a review of the transactions of Lessee relating to this Lease during the preceding

calendar year and that such review has not disclosed the existence during such period, nor does the signer have knowledge of the existence as at the date of such certificate, of any condition or event which constitutes an Event of Default or which, after notice or lapse of time or both, would constitute an Event of Default, or, if any such condition or event existed or exists, specifying the nature and period of existence thereof and what action Lessee has taken or is taking or proposes to take with respect thereto, and from time to time such other information as Lessor may reasonably request.

41. MISCELLANEOUS.

(a) *Lessee to Record and File Documents.* Lessee, at its sole expense, agrees (a) that prior to the first Quarterly Transfer Date it will (1) record or cause to be recorded the Agreement and Disclaimer in the office of the Recorder of Deeds of Greene County, Pennsylvania and (2) file or cause to be filed this Lease and financing statements relating to this Lease and the assignment to Lessor of certain of Lessee's rights under the Coal Purchase Agreement in the offices referred to in the opinions of counsel called for by Section 6 hereof and in such other places as Lessor and its counsel may reasonably request and (b) that it will from time to time as may be necessary or advisable file such continuation statements and other supplemental or subsequent documents as may be necessary to maintain the effectiveness of the filings referred to in (a) above and to inform Lessor, the Owner Participants, if any, the Trustee and the Noteholders of such filings and to furnish them with certified copies of documents so filed within a reasonable time after such filings have been made.

(b) *Cooperation on Tax and Other Matters.* Lessee will fully cooperate with Lessor, at Lessee's expense, in regard to seeking the tax ruling referred to in Section 6 hereof, including, without limitation, providing any and all engineering estimates of serviceable life and residual value of the Designated Assets. Lessee will prepare and file in timely fashion at its expense or, if Lessor is required to file, prepare and deliver to Lessor at Lessee's expense within a reasonable time prior to the date for filing any reports with respect to the condition or operation of the Transferred and Leased Assets during any period included in the Term which are required to be filed with any federal, state or other governmental or regulatory authority, including any tax reports or returns.

(c) *Transfers of Title by Lessor and Owner Participants, if any.* Each transfer of title to any Transferred or Leased Asset by Lessor and the Owner Participants, if any, to Lessee or any other person shall be a transfer only of all the right, title and interest of Lessor and the Owner Participants, if any, therein, and shall as to Lessor and the Owner Participants, if any, be without recourse, representation or warranty whatsoever, express or implied, except a representation that the Transferred or Leased Asset being transferred is free and clear of Encumbrances resulting from acts of or claims against Lessor and the Owner Participants, if any (other than Encumbrances, if any, which Lessee is required to discharge hereunder). Each such transfer shall be evidenced by such documents (prepared by the transferee) as Lessee or such other person may reasonably request the Lessor to execute and deliver. Lessor shall sign and deliver all such documents on behalf of itself and the Owner Participants, if any. Lessor and the Owner Participants, if any, shall be obligated to transfer title as aforesaid, upon request and against payment, if any is required pursuant hereto, at any time when Lessee elects or becomes obligated pursuant hereto to purchase or sell to a third party any of the Designated, Transferred or Leased Assets.

(d) *Severability and Waiver of Law.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

(e) *Merger; Modification in Writing.* This instrument expresses the entire understanding of the parties relating to the subject matter hereof, and it supersedes all prior understandings. No term or

provision of this Lease may be amended, modified, supplemented (except by Interim and Basic Lease Supplements) or terminated orally, but only in compliance with the applicable provisions of the Participation Agreement by an instrument in writing signed (a) by the party against which the enforcement of the amendment, modification, supplement, or termination is sought and (b) by any officer, or solicitor on the payroll, of Hydro.

(f) *Binding Effect.* This Lease shall be binding upon the Lessor and the Lessee and inure to the benefit of Lessor, the Owner Participants, if any, Lessee, the Trustee, each Note Purchaser, each Noteholder and their respective successors and assigns.

(g) *No Conveyance.* This Lease shall constitute an agreement of license and lease, and nothing herein shall be construed as conveying to Lessee any right, title or interest in any Transferred or Leased Asset except as a licensee and lessee only.

(h) *Rent Payments.* Notwithstanding any provision hereof to the contrary, any payment of Rent due on a day which is not a Business Day may be paid on the next day which is a Business Day without interest for the period from such due date to such date of payment.

(i) *Lessor's Obligations Limited; Captions.* In the absence of willful misconduct or gross negligence, the Lessor shall have no obligation or duty to the Lessee or any other person with respect to the transactions contemplated hereby except those obligations or duties expressly set forth herein. In the event that any person shall allege or contend that there has been willful misconduct or gross negligence on the part of the Lessor, such person shall bear the burdens of coming forward with evidence and of persuasion with respect to such allegation or contention. The captions in this Lease are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

(j) *New York Law to Govern.* This Lease shall in all respects be governed by, and construed in accordance with, the laws of the State of New York, including all matters of construction, validity and performance, the State of New York being the state in which the principal place of business of Lessor is located and the state in which the parties intend that this Lease and all the Interim and Basic Lease Supplements shall be delivered.

(k) *Assignment.* Lessee may at any time, to the extent permitted by law, assign all its right, title and interest herein, and delegate all its duties hereunder, to Hydro if, contemporaneously with such assignment and delegation, (i) Hydro shall have duly, validly and irrevocably assumed (without limitation on recourse against Hydro) by written instrument in form and substance satisfactory to Lessor, the Trustee and the holders of 66⅔% in principal amount of the Notes then outstanding (and, until the last closing under the Participation Agreement, each Note Purchaser) and their respective counsel, each and every obligation of Lessee hereunder, and (ii) Lessor, the Trustee and each Noteholder (and, until the last closing under the Participation Agreement, each Note Purchaser) shall have received such opinions of their respective counsel and counsel for Hydro with respect to the validity of such assumption as shall have been reasonably requested by those persons who have granted their consent as aforesaid. Except as expressly permitted by this Lease, Lessee may not assign its rights hereunder without both (i) the prior written consent of Lessor which will not be unreasonably withheld and (ii) compliance with all the applicable provisions of the Participation Agreement.

(l) *Accounting Data.* Lessee at its expense will provide Lessor and the Owner Participants, if any, with plenary access to all accounting, appropriation control and other data reasonably necessary for their respective accounting and tax purposes.

(m) *Chattel Paper.* To the extent, if any, that this Lease or any Basic Lease Supplement constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction) no security interest in this Lease or any Interim or Basic Lease Supplement may be created through the transfer or possession of any counterpart other than the original counterpart, which

shall be identified as the counterpart containing the receipt therefor executed by the Trustee on the signature page thereof.

(n) *Other Lease.* Lessor and Lessee are simultaneously executing and delivering (i) a Non-Recourse Purchase and Lease Agreement (relating to surface railway rolling stock) and (ii) a Non-Recourse Purchase and Lease Agreement (not relating to surface railway rolling stock), each dated as of October 1, 1973. This Lease is one of such two instruments. Each such instrument is identical except for the title and the property thereby demised. Except for the coverage of different and distinct property, the two Non-Recourse Purchase and Lease Agreements shall be deemed to be and shall in all respects be construed as one and the same instrument, as if the Lessor had executed and delivered to the Lessee a single Lease covering all properties collectively demised by this Lease and the other Non-Recourse Purchase and Lease Agreement.

IN WITNESS WHEREOF, Lessor and Lessee have each caused this Agreement to be duly executed by their respective officers, hereunto duly authorized, on March 1, 1974 but to be deemed to be retroactively effective as of October 1, 1973.

WHITKATH INC., *Lessor*

[SEAL]

By W. F. Ludwig.....
President

UNITED STATES STEEL CORPORATION, *Lessee*

[SEAL]

By A. H. Lang.....
Vice President

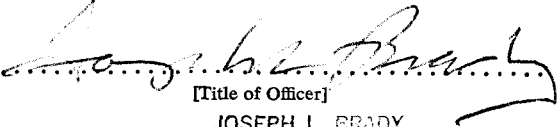
Attest:

R. D. Wilson.....
Assistant Secretary

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this 28th day of February, 1974, before me personally appeared W. F.
....., to me personally known, who being by me duly sworn, says that he is the
..... of WHITKATH INC., a New York corporation, that the seal affixed
to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and
sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the
execution of the foregoing instrument was the free act and deed of said corporation.

(Seal, if any)

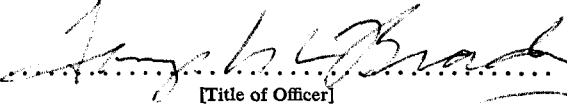

[Title of Officer]
JOSEPH L. GRADY
NOTARY PUBLIC, STATE OF NEW YORK
No. 60-5418875
Qualified in Westchester County
Commission Expires March 30, 1974

My Commission expires

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this 28th day of February, 1974, before me personally appeared W. H.
....., to me personally known, who being by me duly sworn, says that he is the
..... of UNITED STATES STEEL CORPORATION, a Delaware corporation,
that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instru-
ment was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he
acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Seal, if any)


[Title of Officer]
JOSEPH L. GRADY
NOTARY PUBLIC, STATE OF NEW YORK
No. 60-5418875
Qualified in Westchester County
Commission Expires March 30, 1974

My Commission expires

(Lease relating to surface railway rolling stock)

BASIC LEASE SUPPLEMENT NO.

THIS BASIC LEASE SUPPLEMENT dated as of, 197..., between WHITKATH INC., a New York corporation ("Lessor"), acting on behalf of itself and the Owner Participants, if any, and UNITED STATES STEEL CORPORATION, a Delaware corporation ("Lessee"),

WITNESSETH :

WHEREAS, Lessor and Lessee have heretofore entered into two Non-Recourse Purchase and Lease Agreements dated as of October 1, 1973 (collectively, the "Lease"), (the terms defined in such Lease being herein used with the same meaning), which Lease provides for the execution and delivery from time to time of Basic Lease Supplements substantially in the form hereof for the purpose of confirming either (i) the initial demise of Designated or Transferred Assets or (ii) the continuation of the demise of Leased Assets previously leased by Lessee from Lessor and the Owner Participants, if any, under Interim Lease Supplements;

NOW, THEREFORE, in consideration of the premises and other good and sufficient consideration, Lessor and Lessee hereby agree as follows:

1. The Lessor hereby delivers and leases to Lessee under the above-mentioned Lease, and Lessee hereby accepts and leases from Lessor under such Lease, the Leased Asset or Assets listed on Schedule A annexed hereto; such Leased Assets are among those included in Group under Schedule to the above-mentioned Lease.

2. Lessee shall pay Basic Rent for the Leased Assets hereby demised in the amounts specified on Schedule A annexed hereto at the times and in the manner determined pursuant to the above-mentioned Lease. The schedule of Stipulated Loss Value, Termination Value and Optional Termination Value annexed hereto, if any, supersedes (to the extent specified therein) the values specified in the appropriate Schedule referred to in paragraph 1 above to the above-mentioned Lease. The commencement and expiration dates of the Basic Term for each Leased Asset hereby demised shall be those specified in respect thereto on Schedule A.

3. To the extent, if any, that this Basic Lease Supplement constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction) no security interest in this Basic Lease Supplement may be created through the transfer or possession of any counterpart other than the original counterpart, which shall be identified as the counterpart containing the receipt therefor executed by the Trustee on the signature page thereof.

4. This Basic Lease Supplement incorporates, and is to be construed in accordance with, the terms of such Lease as if set out in full herein.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Basic Lease Supplement to be duly executed by the undersigned, hereunto duly authorized, as of the day and year first above written and to be delivered in the State of New York.

WHITKATH INC., *Lessor*

By

UNITED STATES STEEL CORPORATION, *Lessee*

By

BILL OF SALE NO.
 (No. to be filled in by United States Steel Corporation)

THIS BILL OF SALE made this day of, 197.. by and between

.....
 (type or print name and address of Vendor above)
 (hereinafter called "Vendor") and WHITKATH INC., a New York corporation ("Whitkath"), acting on its own behalf and as attorney-in-fact for the other persons, if any ("Owner Participants") named on the attached Schedule A, if any:

W I T N E S S E T H :

That for the consideration of the sum of One Dollar (\$1.00) and other considerations paid to Vendor by or on behalf of Whitkath, the receipt of which is hereby acknowledged, Vendor has bargained, sold, assigned, transferred and set over, and by these presents does hereby bargain, sell, assign, transfer and set over to Whitkath and the Owner Participants, if any, as tenants in common, the materials, equipment and other property (the "Equipment") covered by the attached invoice(s) or schedule(s).

Vendor hereby represents and warrants to Whitkath and the Owner Participants, if any, that:

1. Vendor (i) deals commercially or otherwise in goods such as the Equipment or (ii) otherwise by its occupation holds itself out as having knowledge and skill peculiar to the Equipment.

2. Vendor had, until transfer hereunder, exclusive, valid legal title to the Equipment and good and lawful right to sell the Equipment, that the same is accurately described in reasonable detail on the attached invoice(s) or schedule(s) and that title to the Equipment is free of all security interests, claims, liens, community property rights and encumbrances of any nature.

3. Vendor agrees to indemnify, protect, save, defend and keep harmless Whitkath from any and all liabilities, losses, damages, claims, actions, suits, costs and expenses, including legal fees and expenses of whatever kind and nature, arising out of the failure of Vendor to properly pay any amounts legally due or discharge any obligations to any party furnishing labor and materials relating to the Equipment as a result of material furnished or work performed by, through, under or upon the request of Vendor.

4. Vendor waives and relinquishes any and all rights to benefit from or to file any lien, security interest or other encumbrance upon the Equipment and the real estate upon which such Equipment is situated and acknowledges that any such lien, security interest or other encumbrance shall be void *ab initio*.

5. Vendor agrees to indemnify, protect, save, defend and keep harmless Whitkath from any liabilities, losses, damages, claims, actions, suits, costs and expenses which may arise out of any claims for patent infringement relating to the Equipment, except in cases of designs specified by United States Steel Corporation, a Delaware corporation ("USS"), and not developed or purported to be developed by Vendor or any company controlled by Vendor, and materials specified by USS and not manufactured by Vendor or by any company controlling, controlled by or under common control with Vendor.

6. This Bill of Sale shall be governed by and construed in accordance with the laws of New York, and the rights of Whitkath and the Owner Participants, if any, hereunder shall inure to their respective successors and assigns.

7. This Bill of Sale expresses the entire understanding between Vendor, Whitkath and the Owner Participants, if any, and can be amended or waived only by a written instrument signed by the party charged.

IN WITNESS WHEREOF, the undersigned, hereunto duly authorized, has signed and delivered this Bill of Sale on the above date.

.....
(type or print name of Vendor)

By
Signature

**This Space Exclusively for Use by
WHITKATH INC.**

**Received in New York City
on:**

By

.....
(type or print name and title or capacity of person
whose signature appears above)

SCHEDULE 3
to Lease
(relating to
surface railway rolling stock)

(there are no Groups covered by this instrument except Group VI(b))

Group VI(b)

27 Year Lease Term

12 Year ADR Life

1. Surface Railway Rolling Stock.

Each Installment of Interim or Basic Rent as a Percent of Lessor's Cost : 1.58540%.

Equity : 31%. Debt : 69%.

Quarterly Payment Date	Stipulated Loss Value	Termination Value	Optional Termination Value
1	107.645%	100.902%	107.645%
2	108.473	101.679	108.473
3	109.177	102.332	109.177
4	109.754	102.858	109.754
5	110.202	103.254	110.202
6	110.594	103.594	110.594
7	110.929	103.876	110.929
8	111.206	104.100	111.206
9	111.424	104.265	111.424
10	111.588	104.375	111.588
11	111.697	104.431	111.697
12	111.752	104.431	111.752
13	106.652	99.276	106.652
14	106.599	99.168	106.599
15	106.494	99.007	106.494
16	106.336	98.793	106.336
17	106.134	98.534	106.134
18	105.906	98.249	105.906
19	105.653	97.939	105.653
20	105.375	97.603	105.375
21	99.973	92.143	99.973
22	99.647	91.758	99.647
23	99.297	91.349	99.297
24	98.527	90.459	98.527
25	98.923	90.916	98.923
26	98.109	89.981	98.109
27	97.670	89.481	97.670
28	97.210	88.959	97.210
29	91.630	83.318	91.630

NOTE: Basic Rent and values subject to recomputation by Lessor in relation to assets which are initially leased on Interim Rent and in certain other circumstances.

S3-1

(Lease relating to surface railway rolling stock)

SCHEDULE 3
to Lease
(relating to
surface railway rolling stock)

(Group VI(b))

Quarterly Payment Date	Stipulated Loss Value	Termination Value	Optional Termination Value
30	91.130%	82.755%	91.130%
31	90.610	82.172	90.610
32	90.071	81.570	90.071
33	89.513	80.948	89.513
34	88.938	80.309	88.938
35	88.346	79.652	88.346
36	87.737	78.978	87.737
37	87.111	78.286	87.111
38	86.470	77.579	86.470
39	85.815	76.857	85.815
40	85.144	76.120	85.144
41	84.459	75.367	84.459
42	83.761	74.601	83.761
43	83.051	73.822	83.051
44	82.329	73.030	82.329
45	81.593	72.225	81.593
46	80.848	71.409	80.848
47	80.092	70.583	80.092
48	79.326	69.746	79.326
49	78.550	68.898	78.550
50	77.766	68.042	77.766
51	76.975	67.177	76.975
52	76.175	66.304	76.175
53	75.368	65.423	75.368
54	74.552	64.532	74.552
55	73.728	63.634	73.728
56	72.896	62.726	72.896
57	72.056	61.809	72.056
58	71.207	60.883	71.207
59	70.350	59.949	70.350
60	69.484	59.004	69.484
61	68.609	58.051	68.609
62	67.725	57.088	67.725
63	66.832	56.115	66.832
64	65.930	55.132	65.930
65	65.018	54.140	65.018
66	64.094	53.138	64.094
67	63.167	52.125	63.167
68	62.227	51.102	62.227
69	61.277	50.069	61.277
70	60.318	49.026	60.318
71	59.348	47.971	59.348
72	58.368	46.906	58.368

NOTE: Basic Rent and values subject to recomputation by Lessor in relation to assets which are initially leased on Interim Rent and in certain other circumstances.

S3-2

(Lease relating to surface railway rolling stock)

SCHEDULE 3
to Lease
(relating to
surface railway rolling stock)

(Group VI(b))

Quarterly Payment Date	Stipulated Loss Value	Termination Value	Optional Termination Value
73	57.378%	45.830%	57.378%
74	56.368	44.743	56.368
75	55.366	43.644	55.366
76	54.345	42.535	54.345
77	53.312	41.413	53.312
78	52.268	40.280	52.268
79	51.213	39.136	51.213
80	50.147	37.979	50.147
81	49.069	36.810	49.069
82	47.980	35.629	47.980
83	46.879	34.435	46.879
84	45.766	33.229	45.766
85	44.641	32.009	44.641
86	43.504	30.777	43.504
87	42.354	29.532	42.354
88	41.191	28.273	41.191
89	40.016	27.001	40.016
90	38.828	25.716	38.828
91	37.627	24.416	37.627
92	36.412	23.102	36.412
93	35.184	21.774	35.184
94	33.942	20.432	33.942
95	32.686	19.074	32.686
96	31.416	17.702	31.416
97	30.132	16.315	30.132
98	28.833	14.913	28.833
99	27.520	13.495	27.520
100	26.191	12.062	26.191
101	24.848	10.612	24.848
102	23.489	9.146	23.489
103	22.114	7.664	22.114
104	20.724	6.166	20.724
105	19.318	4.650	19.318
106	17.895	3.118	17.895
107	16.456	1.568	16.456
108	15.000	0.000	15.000

NOTE: Basic Rent and values subject to recomputation by Lessor in relation to assets which are initially leased on Interim Rent and in certain other circumstances.

HYDRO CONSENT AND AGREEMENT

The undersigned, THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO, a body corporate of the Province of Ontario ("Hydro"), hereby consents (a) to the assignment by United States Steel Corporation, a Delaware corporation ("USS"), to WHITKATH INC., a New York corporation ("Whitkath"), acting for itself and as attorney-in-fact for the Owner Participants, if any, referred to in the Lease referred to below, in consideration of the agreements of Whitkath set forth in such Lease, of all of USS' right, title and interest in, to and under (but none of USS' duties, liabilities and obligations under) Section 6.1 of the Coal Purchase Agreement dated as of October 1, 1973 between Hydro and USS (the "Coal Purchase Agreement") and (b) to the reassignment of certain thereof by Whitkath to the Trustee as provided in the Indenture. Such assignments are pursuant to Sections 13 of the Non-Recourse Purchase and Lease Agreements (collectively the "Lease") dated as of such date between USS and Whitkath and to the Indenture. Terms are used in this Consent and Agreement with the same meaning as provided in the Lease. Hydro hereby agrees, in accordance with the Coal Purchase Agreement and the Lease to pay over, or to cause to be paid over, all amounts payable by Hydro pursuant to Section 6.1 of the Coal Purchase Agreement directly to the person entitled thereto as follows, (a) all amounts specifically assigned to the Trustee pursuant to the Indenture shall be paid to the Trustee at its Corporate Securities Service Department, 111 Wall Street, N. Y., N. Y. 10015 and (b) all other amounts shall be paid to Whitkath, c/o Morgan Guaranty Trust Company of New York, Attention: Loan Department, 23 Wall Street, N. Y., N. Y. 10015. Each payment by Hydro to either party shall be accompanied by a written statement specifying the amount paid and identifying the section of the Lease pursuant to which the payment is made. A copy of each such written statement sent to the Trustee shall be sent to Whitkath and a copy of each such written statement sent to Whitkath shall be sent to the Trustee. Hydro's obligations under this Consent and Agreement and Section 6.1 of the Coal Purchase Agreement shall be those of a primary obligor (and not those of a guarantor or surety) whether or not any other person shall also be obligated to fulfill any such obligation, and any person seeking performance of any such obligation may proceed directly against Hydro without first seeking to enforce such obligation against any other person. It is understood and agreed that, so long as such assignments shall be in effect, Whitkath and the Trustee may, subject to the terms and conditions of said assignments, (i) avail themselves of all the rights and privileges of USS under the Coal Purchase Agreement which have been so assigned, (ii) make any demands and enforce any rights and powers thereunder with the same force and effect as though they were made and enforced by USS and (iii) demand and receive all sums payable and to become payable to USS thereunder and apply them in accordance with such assignment. Hydro agrees to give Whitkath and the Trustee duplicate originals of all notices, reports and other communications required to be given to USS pursuant to the terms and conditions of Sections 10 and 11 of the Coal Purchase Agreement. This Consent and Agreement shall create an absolute and unconditional obligation of Hydro and shall not be affected by any right of set-off, counterclaim, recoupment, defense (other than payment) or other right which Hydro may now or hereafter have against USS, Whitkath, the Owner Participants, if any, the Trustee, the Note Purchasers, the Noteholders or anyone else for any reason whatsoever as more fully provided in Section 6.1 of the Coal Purchase Agreement, whether the Coal Purchase Agreement shall have terminated by operation of law or otherwise.

Hydro represents and warrants to USS, Whitkath, the Owner Participants, if any, the Trustee, the Note Purchasers and the Noteholders that the Coal Purchase Agreement, the Participation Agreement and this Consent and Agreement are each a legal, valid and binding agreement of Hydro.

To the extent permitted by applicable law, Hydro (a) agrees that any legal or equitable suit, action or proceeding arising out of or relating to obligations of Hydro under this Consent and Agreement, the Lease, the Participation Agreement or Section 6.1 of the Coal Purchase Agreement may be instituted and prosecuted in any state or federal court of competent jurisdiction in the State of New York, United States

Schedule 4 to Lease

of America, (b) waives any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding, and (c) irrevocably submits to the jurisdiction of any such court in any such suit, action or proceeding. Hydro will designate and irrevocably appoint United States Corporation Company, at its office in the Borough of Manhattan in the City and State of New York, United States of America, as Hydro's authorized agent to accept and acknowledge on its behalf service of any and all process which may be served in any such suit, action or proceeding in any state or federal court in the State of New York and, to the extent permitted by applicable law, agrees that service of process upon said United States Corporation Company at its said office in the City of New York and written notice of said service to Hydro, mailed or delivered to Hydro as provided pursuant to Section 39 of the Lease, shall be deemed in every respect effective service of process upon Hydro in any such suit, action or proceeding in the State of New York, and, to the extent permitted by applicable law, shall be taken and held to be valid personal service upon Hydro, whether or not Hydro shall then be doing, or at any time shall have done, business within the State of New York, and that any such service of process shall be, to the extent permitted by applicable law, of the same force and validity as if service were made upon it personally and directly according to the laws governing the validity and requirements of such service in the Province of Ontario or the State of New York, and waives all claim of error by reason of any such service. Said designations and appointments shall, to the extent permitted by applicable law, be irrevocable until the final payment or other discharge of all obligations of Hydro under or pursuant to the Lease, Section 6.1 of the Coal Purchase Agreement, the Participation Agreement and the Indenture.

This Hydro Consent and Agreement shall in all respects be governed by, and construed in accordance with, the laws of the State of New York.

IN WITNESS WHEREOF, the undersigned, hereunto duly authorized have signed this instrument as of the date set forth below.

**THE HYDRO-ELECTRIC POWER COMMISSION
OF ONTARIO**

By
Chairman

By
Secretary

WHITKATH INC.

By
President

FIRST NATIONAL CITY BANK, as Trustee

By

Executed on March 1, 1974 but effective
as of October 1, 1973

INTERIM LEASE SUPPLEMENT NO.

THIS INTERIM LEASE SUPPLEMENT dated as of, 197..., between WHITKATH INC., a New York corporation ("Lessor") acting on behalf of itself and the Owner Participants, if any, and UNITED STATES STEEL CORPORATION, a Delaware corporation ("Lessee").

WITNESSETH :

WHEREAS, Lessor and Lessee have heretofore entered into two Non-Recourse Purchase and Lease Agreements dated as of October 1, 1973 (collectively, the "Lease"), (the terms defined therein being herein used with the same meaning), which Lease provides for the execution and delivery from time to time of Interim Lease Supplements substantially in the form hereof:

Now, THEREFORE, in consideration of the premises and other good and sufficient consideration, Lessor and Lessee hereby agree as follows:

1. Lessor hereby delivers and leases to Lessee under the above-mentioned Lease, and Lessee hereby accepts and leases from Lessor under such Lease, the Leased Asset or Assets listed on Schedule A annexed hereto; such Leased Assets are among those included in Group under Schedule to the above-mentioned Lease.

2. The Term of this Interim Lease Supplement shall begin as of the day and year first above written and shall expire on the expiration date determined pursuant to such Lease.

3. Lessee shall pay Interim Rent for the Leased Assets hereby demised in the amounts specified on Schedule A annexed hereto at the times and in the manner determined pursuant to the above-mentioned Lease.

4. This Interim Lease Supplement incorporates, and is to be construed in accordance with, the terms of the Lease as if set out in full herein.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Interim Lease Supplement to be duly executed by the undersigned, hereunto duly authorized, as of the day and year first above written and to be delivered in the State of New York.

WHITKATH INC., *Lessor*

By

UNITED STATES STEEL CORPORATION, *Lessee*

By

SCHEDULE 6
to Lease
(relating to
surface railway rolling stock)

THERE IS NO SCHEDULE 6 TO THIS LEASE

S6-1

(Lease relating to surface railway rolling stock)